

❖ **Knowing it when you (don't) see it: Mapping the pornographic child in order to diffuse the paedophilic gaze**

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Abstract

Developments in legislation addressing child pornography increase the range of media that can be prohibited. Further, the language that is used to define child pornography is not easily reconciled with the processes involved in viewing images. Anxiety about paedophilia and the vulnerability of children, encourages a process of interpretation known as the 'paedophilic gaze'. In 2001, the COPINE scale was developed as a way to develop a nuanced understanding of the range of images collected by individuals with a sexual interest in children. Rather than conceiving of child pornography as a homogeneous form of offensive, or harmful, discourse, it is important to continue the development of a typology of images of children that have the potential to be prohibited under child pornography legislation. This article synthesises pre-existing typologies, reconstituting them through a new typology that aims to develop more nuanced variables to describe the content of images. Furthermore, it attempts to incorporate ethical and contextual values that are involved in the production and consumption of images, in order to improve the understanding of how images of children function in everyday life.

Introduction

Visual culture emerges in sharpest relief when the second commandment, the ban on the production and display of graven images, is observed most literally, when seeing is prohibited and invisibility is mandated (Mitchell, 2002: 99).

Chief Justice Potter Stewart's often quoted claim that, despite being unable to offer a comprehensive definition of obscenity, he knows it when he sees it, is relevant to consider in relation to the growing amount of material that has the capacity to be classified as child pornography. [1] If one knows obscenity through seeing it, then prohibitions against images attempt to diffuse the emergence of knowledge by targeting content in order to inhibit particular kinds of recognition. The prohibitions against viewing child pornography mandate a kind of invisibility in relation to the issues that surround the production and consumption of this material. Consequently, the lines between images that are legally objectionable, legal yet arguably 'sexualised' images of minors, and innocuous images of minors that nonetheless have the capacity to arouse prurient interest, are obscured through the invisibility that prohibition mandates.

The dialectic between prohibition and recognition facilitates a way of looking at images of children, known as the 'paedophilic gaze'. The paedophilic gaze renders all images of children

into a kind of virtual pornography. An image is deemed problematic, not simply when it involves the sexual exploitation of a minor, but also when it has the capacity to elicit a sexual response. Rather than eradicating the prurient, this approach intensifies the image of the pornographic child because no kind of image of a child can be unequivocally and unambiguously figured as one that precludes any possibility of sexual arousal. Examining images of children with such a gaze is, therefore, only useful for reproducing the pornographic child.

To describe social concern about images of children, and the effect of images upon children, as the 'pornographic child' is to draw upon the history of social concern about the sexual child (Angelides, 2004; Egan & Hawkes, 2008; Foucault, 1978). The sexual child is a threat to the corroboration between the dialectics of adulthood and childhood, sexuality and asexuality. Within this dialectic, the adolescent and its sexuality, are suppressed. [2] The notion that the media has the capacity for moral corruption is not only a familiar trope in discourse about the sexual child, but also the general discourse about the vulnerability of children (Gauntlett, 2005: 145-147; Heins, 2007; Livingstone, 2009: 151-180). However, the pornographic child is distinct because it encompasses the social concern that children mediate, and transmit, evidence of their sexual desires and activities. This activity, described in the mass media and scholarship as 'sexting', is contentious, as it threatens both the concept of child pornography and children in a variety of ways (Bowker and Sullivan, 2010; Wastler, 2010).

The pornographic child relates to the paedophilic gaze because the paedophilic gaze facilitates the logic of pornography in the sense that it perpetuates, rather than fulfils, desire (Dennis, 2009: 97). The ability to develop new ways of discovering sexual signifiers is counterproductive to the idea of child protection that underwrites the prohibition of pornographic images of children. Accordingly, it is necessary to articulate a system of values that can be used to classify images of children in a way that attempts to consider the different contexts of cultural production and consumption of images, rather than focusing upon simply upon content or individual pathology. Typically, legal and psychological disciplines have been most influential in their attempts to define child pornography, and to design typologies that classify images of children. However, these attempts can be supplemented through considering values that are relevant to the field of visual cultural studies.

In this article, recent developments in Australian legislation will be discussed. These developments will then be contextualised through a discussion of the paedophilic gaze, a process that is an effect of, and an influence upon, current legislation. Finding the existing modes of interpretation and classification unsatisfactory, a typology that synthesises existing ways of classifying images of children will be proposed, in order to establish a new typology that considers context and mode of production, in conjunction with a more sophisticated manner of describing the persons depicted in an image.

Legal Definitions of Child Pornography in Australia

In Australia, child pornography is defined in both state and federal legislation. Commonwealth legislation has recently made significant amendments to offences relating to child sexual abuse and child pornography. One of these is the *Crimes Legislation Amendment (Sexual Offences Against Children) Bill 2010*. This Bill amends the *Crimes Act 1914*, the *Telecommunications (Interception and Access) Act 1979*, the *Criminal Code Act 1995*, the *Australian Crime Commission Act 2002*, and the *Surveillance Devices Act 2004*. These amendments recognise that is a Commonwealth child sex offence when an individual commits a child sex offence (including pornography offences) overseas, on the Internet, or through the postal service. Other child pornography offences are covered under state legislation.

On a Commonwealth level, two separate kinds of material are identified: child pornography

material and child abuse material. Child pornography material, as defined under the *Criminal Code Act 1995*, Section 473.1, Subsection 273.1 (1), "depicts or describes a child engaged in sexual activity in a way that reasonable persons would regard as being, in all the circumstances, offensive" (O'Connor, 2010: 14). Child abuse material as defined, in the same section, "includes material that depicts or describes a child who is, or appears or is implied to be, a victim of torture, cruelty or physical abuse in a way that reasonable persons would regard as being, in all the circumstances, offensive" (ibid.: 48, 117-118). Therefore, child pornography and child abuse images, under Australian legislation, includes photo-realistic and non-photo-realistic images, including fictional persons. It also includes adults who appear as minors, and written descriptions, covering a wide range of depictions, like lasciviousness, nudity (in particular contexts), sexual performances and violence. The broadness of this legislation facilitates its application to a wide variety of visual cultural products, extending far beyond material that is created in circumstances of child sexual exploitation. [3]

State legislation defines child pornography in a way that is consistent with Commonwealth definitions, yet uses slightly different language. The *Crimes Amendment (Sexual Offences) Act 2008*, under Section 91H defines child pornography as:

... material that depicts or describes (or appears to depict or describe) in a manner that would in all the circumstances cause offence to reasonable persons, a person who is (or appears to be a child):

(a) engaged in sexual activity, or

(b) in a sexual context, or

(c) as the victim of torture, cruelty or physical abuse (whether or not in a sexual context).

Like the Commonwealth legislation, state legislation in NSW covers materials that are sexually explicit, as well as material that shows children as the victims of torture or physical abuse. Images of children in a sexual context are included and there's no specification as to whether nudity is a prerequisite, or what contexts are considered sexual. Furthermore, it is not necessary that an image actually depicts any of these qualities, but rather it is sufficient that the image appears to depict these properties. This clause provides an important clue about the nature of representation, as it demonstrates that images are fundamentally different to text, in that they don't have the power to propositionise: they seem to simply appear. Resemblance has the capacity to disguise the process of interpretation, whereas WJT Mitchell (2005) suggests that an image is more like "a ventriloquist's dummy into which we project our own voice" (p.140). The relationship between viewing and recognition is particularly problematic when one has to evaluate the sexual context of an image.

The 2010 *Report of the Child Pornography Working Party* signals important developments in the conceptualisation of child pornography in New South Wales (NSW) that seem to exacerbate, rather than alleviate, the problems with existing legislation. These developments increase the risks for people who produce, distribute, or possess contentious images of children, without a discernible benefit to child protection. One recommendation made to the NSW government was that the affirmative defence to a charge relating to child pornography, that the material serves a genuine artistic purpose, should be removed from section s91G of the Crimes Act 1900 (NSW). Whilst it is reasonable to infer that this has been recommended in order to prevent false claims, where the child pornographer disguises his productions as art, it begs the question as to why the court would have trouble distinguishing between a legitimate claim and an illegitimate one, should someone attempt to use this affirmative defence.

Another recommendation is that the term 'child pornography' should be eliminated, and that material that is currently described as child pornography and child abuse material respectively, should be referred to solely as 'child abuse material'. [4] This recommendation serves to further obscure the wide range of media that has the potential to be prohibited under existing child pornography legislation. If child pornography legislation only covered depictions (or descriptions) of children engaged in sexual activity, or as the victims of torture, then this semantic shift would be reasonable. However, given that legislation covers children appearing in a 'sexual context', the extent to which these children are abused becomes unclear because the notion of a sexual context is fundamentally unclear. Similarly, the extent to which voluntarily exchanged 'sexting' material can be considered child abuse material is questionable.

The rationale for the prohibition of child pornography has shifted with little opposition. Whilst the rationale for legislation originally stemmed from a desire to spare children from the sexual abuse that is involved with participation in, and exposure to, child pornography, further amendments have asserted that the idea of childhood itself deserves protection, and that materials are objectionable simply if there's the possibility that they may elicit a paedophilic response. However, this approach is not tenable in light of the research that suggests that even the most innocuous materials have the capacity to elicit sexual arousal (Howitt, 1995).

The epistemological framework that determines whether an image meets the legal criteria for obscenity, is incongruous with contemporary media production and consumption. Australian legislation criminalises the production, circulation and possession of material (including representations of minors) that is considered 'offensive' to a 'reasonable person'. This approach privileges the normative representation of figures, in normative contexts, whilst augmenting suspicion about representations, and fandoms that circulate these images, that transgress conventional standards of decency. As demonstrated by Mark McLelland (2005; 2010), images of sexualised children that are recognised as culturally foreign are treated with particular suspicion, and do not receive the same degree of defence as images that occupy a prestigious place within Western visual culture. This is not only prejudicial against individuals who have tastes that are distinct from, or opposed to, conventional tastes, but due to an increasingly fragmented media audience, it is increasingly difficult to know when the standards of decency has been violated. As media audiences fragment, in the wake of technological development and multiculturalism, it becomes more difficult to sustain a clear notion of a 'reasonable person' and to know when this body has been offended.

The difficulties in defining child pornography are a symptom of the epistemological misconception of pornography – imagining pornography as a discrete form of media, with discernible content rather than a process of reading. This is, essentially a lack of distinction between vision and recognition. This lack of distinction is most apparent when attempting to calibrate the extent to which an image depicts a sexual context. It is this kind of image, rather than the kinds of images that show overt sexual behaviours, or displays of violence, that elicits the paedophilic gaze.

The Paedophilic Gaze in Contemporary Anglophone Culture

Contemporary Western society, since the late 1970s, has been characterised by unease and confusion about images of children. Public awareness of the commercial production of child pornography, in conjunction with increased attention to the abuses suffered by children, transformed the cultural meanings afforded to images of children (Califa, 2000; Higonnet, 1998; Jenkins, 1998). Furthermore, the kinds of images that have the capacity to be described as child pornography appear to be increasing. In addition to photographs that depict the sexual abuse of children, images (and texts, in places like Australia and Canada,) risk breaching the law for any depiction or depiction of minors in a sexualised context. The difficulties in defining

child pornography, or even a 'sexualised' image of a child, have intensified within Australia in the past five years. The controversy that surrounded the exhibition of Bill Henson's photography is an example of the way that nude images of children can be fiercely contested, even if the debate tends to lapse into a familiar dichotomy between art and pornography (Bray, 2009; 179-181; MacNeill, 2010: 83).

Jason Lee (2009) proposes that, within contemporary culture, paedophilia is primarily about looking, not touching, consistent with celebrity culture's fixation with idol gazing (55). This has been reflected in the production of different kinds of images of children that elicit an erotic gaze; legislation that seeks to define and control this material; and public discourse in the mass media that tends to support the trajectory of this legislation, whilst also producing its own forms of the pornographic child. Rather than simply focusing upon the circumstances that facilitate the sexual abuse of children, or the circumstances that produce pathological forms of sexuality such as paedophilia, contemporary Anglophone society seems increasingly preoccupied with deviant modes of interpretation. This preoccupation appears linked to the "phantasmic status" of paedophilia in contemporary culture (Lumby, 1998: 48). Paedophilia has an uncanny dimension, simultaneously residing in the domestic sphere, and lurking in shadows of the darknets. [5] The inability to locate the paedophile reflects our inability to verify what kind of sexual contexts offend a reasonable person.

The 'paedophilic gaze' is a process where a viewer assumes the gaze of a paedophile in order to establish whether the material should be prohibited. This draws attention to the fact that vision isn't an objective process, but is one that becomes possible through the process of recognition. However, the paedophilic gaze is problematic because it foregrounds the viewer and their *consumption* of an image over concerns about the harms associated with the *production* of an image. The paedophilic gaze suggests that the capacity to consume an image in a sexual context is more important than the material realities that surround the production of images. It is typical to hear child protectionists urge the public to:

re-evaluate the ways we show children in the media. Flick through any clothing catalogue and see for yourself. Look beyond the cute little moppets gazing coquettishly at the camera and look instead at how a paedophile might interpret these kinds of images (Petraitis & O'Connor, 1999:187).

This is a practice where the viewer uncovers *the* secret meaning of children in the media. Innocence is endlessly re-read as eroticism, as the necessity of retaining a discourse of childhood innocence requires an incitement to discourse, to speak of children and their secret sexual appeal: a form of discourse that becomes an indispensable fable in contemporary society (Foucault, 1978: 34-35). This form of interpretation hinges upon a form of disavowed recognition where individuals who do not identify as paedophiles believe that they have the capacity to interpret an image as a paedophile does. Apart from relying upon a monolithic, and doubtlessly false image of the paedophile, the capacity to perform such a reading, even in the service of cultural hygiene, suggests that the paedophile is a role that non-paedophiles are able to faithfully perform.

As Amy Adler (2001) proposes, "child pornography law has changed the way we look at children" (65). Society has adopted the gaze of the paedophile in order to root out pictures of children that harbour secret paedophilic appeal. Concern about what material may stimulate paedophiles has caused tension in all fields of representation such as art, cinema, celebrity photography, video games and online images; as legislation seeks to control a particular kind of mind through the prohibition of particular images. [6] Approaching images of children in this way is a particularly precarious activity because of the borders that childhood and sexuality share.

Post-Romantic culture, according to James Kincaid (1992; 1998), fetishised innocence as an ideal quality in relation to sex, and in relation to childhood. This has an effect of making childhood inextricably sexual, whilst demanding that childhood is heavily regulated to keep sexuality out in order to maintain what is alluring – innocence. The development of a healthy child was therefore a process that required guidance in order to avoid moral corruption (Egan & Hawkes, 2010). However, in addition to the development of particular institutions and practices to facilitate the healthy development of children, it also facilitated a form of representing the nude child in a way that was devoid of sexuality (Mavor, 1995). However, the constant renegotiation of childhood inhibits the possibility of maintaining a consistent reading of images of children. Instead, images that may be innocuous in one temporal or cultural location, have the capacity to become sexual when transposed to another location (Higonnet, 1998).

Legislation has broadened in an attempt to deter and punish individuals involved in the production, circulation and consumption of child pornography. Whilst some areas of legislation are relatively clear and have a clear orientation towards child protection, others can be criticised for focusing too much on what images appear to depict, and hinge upon unverifiable concepts like 'sexual context'. Despite a lack of strong opposition in public discourse, these amendments have been subject to scrutiny across different areas of the humanities. [7] The central argument prosecuted by these authors is that the boundaries that separate child pornography from other images of children have become increasingly difficult to define, and increasingly removed from the scene of child sexual abuse. Whilst these arguments have been coherent and relevant, they've not been articulated in a way that is easily synthesised into a system of values that can be used to describe the range of images of children that have the potential to be described as child pornography. Accordingly, the rest of this article will attempt to sketch what such a system could encompass.

A Preliminary Typology of Images of Children

As images of children are increasingly subject to debate and regulation, it is appropriate to develop a system that can make sense of the different ways in which an image can be arousing, offensive or harmful, independent of whether it is legally objectionable. The COPINE scale is the most widely system, originally designed to classify the range of images that may be collected by paedophiles (Taylor et. al, 2001). The researchers involved in the COPINE project, at University College Cork, discovered that "pictures that are collected by adults with a sexual interest in children are not a homogeneous category" (Taylor et. al, 2001: 99). They proposed a ten-point scale that attempted to highlight the distinctions between the images that are collected by individuals with a sexual interest in children. This scale has been quite influential, operating as a model for the scales used by the Sentencing Advisory Panel (UK) and the one recommended by the NSW Child Pornography Working Party (35-38).

Whilst this definition is more nuanced than a legal definition, it is problematic for its emphasis on content. Whilst content is an important and measurable variable, it's also important to consider the context and form of an image, in order to discover the extent to which pictures of (what appears to be) children are not a homogeneous category. On the basis of research into existing typologies of child pornography (King, 2008; Taylor et. al, 2001), the following typology proposes a new set of variables and values to facilitate the classification of images of children in a way that is relevant for the field of visual cultural studies. Furthermore, since it synthesises modes of classification used in contexts of law enforcement and medical assessment, it has the capacity to function in harmony with these existing typologies.

Content

This variable is similar to what is measured in the COPINE scale. Like the COPINE scale, this scale moves from activities that are relatively innocuous, to other activities that have the

capacity to be an expression of sexual agency, to activities that are unquestionably a process where a minor is seriously abused by one or more other individuals.

Innocuous	No depiction of sexual activity nor genitalia. The formal qualities of the image and the pose of the model, does not suggest that the image was produced for the purposes of arousal.
Lasciviousness	The use of particular angles, perspectives and poses to conform to conventions of seduction.
Nudity	Nudity or the display of genitalia.
Lascivious Nudity	Nudity or the display of genitalia with angles and poses that suggest that the content creator and/or the model are displaying nudity for the purpose of arousal.
Masturbation	An individual engaged in masturbation.
Consensual Sexual Interaction	Sexual interaction between adults and minors, or between minors, in a non-abusive context.
Sexual Assault	Sexual interaction between adults and minors, or between minors, in a way that suggests compliance but not consent.
Rape/ Sexual Torture/ Paraphilias	Sexual abuse of a minor in a context that is patently offensive. The violation of consent, degradation and pain suffered by the victim is apparent. The victim is forced to participate in activities such as bestiality, coprophagia or bondage.

Biological Development

The values for 'biological development' are based upon the Tanner scale (Marshall & Tanner, 1969: 291-303; 1970: 13-23; Tanner, 1962). However, in light of the purpose of the typology, with a specific focus upon minors, it has been adapted. In order to estimate the age of the

minors, attention is paid to details, where visible, such as musculoskeletal development, dental maturation, and signs of physical sexual maturation.

In the legal examination of child pornography, it is typical for images to be subject to medical analysis. This analysis, in the context of US law, places particular emphasis on whether the image is consistent with a child less than twelve years or one that appears to be between thirteen and eighteen years of age (Cooper, 2005: 216). However, it is pertinent to develop a scale that responds to the wide range of child pornography, to both assist in the identification of victims and the duration for which individuals may be abused. Furthermore, the level of maturation affects the way an image of a nude child, one that is not clearly a record of sexual abuse, is interpreted. [8]

This scale of biological development highlights the disparity between biological and legal definitions of the child. In some cases, females can reach full sexual maturity by fourteen, with males following at fifteen years (Cooper, 2005: 234-236, 239). In the context of child pornography legislation, in Anglophone culture, a child is an individual who appears to be under eighteen years of age. However, it appears that it may be difficult to distinguish, from a biological perspective, an individual of sixteen from one of eighteen.

Infant

This includes both infant (12 to 36 months) and preschool (36 to 60 months) aged children. Since there should be no physical sexual maturation at this point, it is important to pay attention to musculoskeletal development and dental maturation. Toddlers have a head height to total height ratio of 1:5. The most indicative developments relate to dental maturation. Teeth erupt from around five months of age, with all incisors present by 11 months. First molars arrive between ten and sixteen months. Canine teeth erupt around 16 to 20 months and second molars around 30 months (Cooper, 2005: 226-232). [9] If all these teeth appear to be developed then it is likely that the individual is at least 30 months of age.

Child

An individual between five and eight years old. Children of this age typically have a head height to total height ratio of 1:6. The level of dental maturation would include a secondary set of central and lateral incisors. The presence of deciduous canine teeth would suggest that the individual is below nine years of age. Secondary first molars should be apparent.

Prepubescent

This stage represents stage one of the Tanner

scale. This would be a person, aged from nine years until the visibility of some sexual maturation (from around ten years for females and eleven years for males). The absence of deciduous canine teeth or the presence of secondary canine teeth are indicative of this stage of development.

Pubescent

This stage represents stage two on the Tanner scale. It could occur from nine but may not occur until around ten and a half in females. This stage occurs from eleven until twelve and a half in males. As Cooper suggests, early development of pubic hair could not always be visible (particularly if the image is not a close up of the genital area, or if the image is of a low resolution), and, in females, pubic hair and breast development may not be synchronous (ibid.: 233-237). In males, if pubic hair is not visible, increased colouration of the scrotal sac can be a reliable measure, as it may be difficult to accurately measure the size of the testes (ibid.:233-234). Some pubic hair may be visible but is scant. Some enlargement of the scrotum or penis should be visible and some breast development should be apparent. Secondary canine teeth may not be, but are likely to be, present.

Adolescent

This stage is equivalent to stage three and four of the Tanner scale. This stage begins around 12 for females and around 13 for males. Pubic hair should be quite apparent but not yet resemble the full distribution of pubic hair that is typical of an adult. Pubic hair distribution is the "most obvious and reliable gauge of sexual maturation in child pornography" (ibid.: 237). Breast development should be quite apparent but have not reached full maturity. Secondary second molars should begin to emerge at this stage.

Adult

This stage is equivalent to stage five of the Tanner scale. This stage occurs by around 15 or 16 years of age. Pubic hair has reached full thickness and distribution. The genitalia and breasts of females, and genitalia of males

appear fully developed. By the age of 15, the average person has a head height to body ratio of 1:6.5. However, a fully developed adult has a ratio of 1:7.5 or 1:8. This distinction can be useful for distinguishing teenagers who have reached full sexual development from fully grown adults. Third molars may begin to erupt at this stage, but may not occur until the individual is in their 20s. This value also includes individuals who are likely to be over the age of 18, but are portraying a minor (as many jurisdictions classify this material as child pornography).

Level of Consent

The term 'level of consent' refers to consent to the production of imagery and not to consent to sexual activity. The Australia Council for the Arts protocols have proposed that minors below 15 years cannot give informed consent to having their likeness captured. However, informed consent can be provided by parents. Minors, 15 and above, do have the capacity to give informed consent to have their likeness captured in an image, and this is independent from the capacity to give consent to sexual activity. Given that the production of child pornography does not necessarily involve sexual activity between persons, or an explicit sexual performance, these issues are not inextricably linked, but rather, draw upon different sets of ethics.

None	Images that have either been taken without any knowledge of the subject, or in violation of their expressed wish.
Low	The participant has not been adequately informed of the ethical issues surrounding the production and distribution of the image.
Unknown	The image offers insufficient clues for the viewer to judge the level of consent that has been given. This is most likely to happen in an encounter with an image in an online context, as opposed to an image in a material publication or art gallery.
Informed	The participant has been made plainly aware, prior to production what the purpose of the image is for, its intended distribution, the right to

withdraw consent to the display of the image, and other facts that enable people to make an informed decision about their participation.

Not Applicable

Images that are produced without a model.

Veracity

The veracity of an image is central to the ethical status of an image. Some authors argue that images of children that don't require a participant to facilitate their production are nonetheless harmful to society because they legitimate paedophilic desire (Eko, 2009: 144-149; King, 2008: 342-343; Oswell, 2006; Quayle et. al 2008: 20), whilst other authors have proposed that the empirical harms of 'virtual child pornography' require substantiation, arguing that it's not appropriate to prohibit such material simply because it has the capacity to offend our moral universe (Gillespie, 2008: 141-144; Ost, 2009: 237-238; Williams, 2004: 257). Failing to adequately differentiate between material with a basis in reality, and that which lacks such a basis is a betrayal of the seriousness of the social crises of paedophilia and child sexual abuse. However, these authors all suggest that the extent that this material has the capacity to incite the abuse of children should be examined. Whilst this question has bearing on the legitimacy of permitting or prohibiting the production or possession of virtual images, this author maintains that it is appropriate to distinguish images that are evidence of child sexual abuse, from images that may glamorise or incite such behaviour, irrespective of the extent that the law recognises this distinction.

Low

Images that a reasonable person would assume to be derived from the artist's imagination, rather than a scene captured. This would include material like paintings, drawings, or computer generated images.

Ambiguous

Images that have sufficient veracity that they could be derived from the artist's imagination or from a scene that actually occurred. However, due to the process of production, the image acquires a virtual quality that inhibits a confident reading of the image's veracity. This would most likely apply to computer-generated images that could potentially have a photographic origin.

Mixed

Images that have elements that are clearly of photographic origin but also contain visual elements that are not of photographic origin. An example of this would be a mixed media collage

that included photo-realistic material.

High

Images that are sufficiently realistic that a reasonable person would believe had a basis in a scene that actually occurred.

Genre

The values for 'Genre' are amended from the 'frames' that Beth Eck (2001) assigned in order to explain the dialectical relationship between content and context that allows a viewer to make sense of a nude image. Although Eck's research addressed the nude image in society, it is also applicable to images of children, because the exposed body and the undeveloped body share a common vulnerability, a common capacity to demand control and regulation. Although the reproduction of images increases the ambiguity of images, increasing their 'danger' to society, Eck proposes that images are bounded to particular frames that allow viewers to draw upon their "history of recognition" to negotiate a reading of the image (608-610). These genres are defined as 'pornography', 'art', 'information' and 'commodified'. Additionally, 'pop culture' and 'vernacular' have been added in order to contend with the different kinds of image that circulate in contemporary culture.

These categories are under-theorised to some extent. The distinction between art and popular culture, for example, is one where popular culture is constituted by its lack of recognition within high culture. Similarly, pornography is a part of popular culture but legislation tends to figure pornography into a separate category, not because the material is sexualised, or sexually explicit, but because it lacks artistic value or social importance. Accordingly, a distinction between popular material that may be sexualised or sexually explicit, but serves other forms of titillation; and material that is sexualised or sexually explicit, and produced primarily for the purposes of sexual arousal, has been maintained.

These genres overlap, in terms of form and content but they occupy distinct contexts in a hierarchy of representation, affecting the probability that the presence of particular content will lead a viewer to interpret the material as child pornography. The recurring crises about nude photography in art, for example, is suggestive not only of contention about photography as a medium within fine arts, but more so the extent to which the position that art occupies within culture is being negotiated. In respect to the 2008 controversy over the photography of Bill Henson, child protection enthusiast Hetty Johnston insisted that whether or not the picture was "art", its cultural status, was not important to its legal or ethical status (Marr, 2008). This comment resembles those made by the 19th century moralist Anthony Comstock, who in his function as leader of the New York Society for the Suppression of Vice (1884) asserted that, "Genius has not more right to be nasty than the common mind" (11). Henceforth, it's important to recognise that this negotiation is an ongoing process within culture and cannot be explained simply through the acceleration of media technologies. Nonetheless, understanding the relationship between these genres is vital because it highlights the logic of the economy of cultural goods (Bourdieu, 1984).

Art

Images that are credentialised through the process of display, sale and critique as a part of

high culture.

Popular Culture	Images that resemble art but are situated outside of high culture.
Commodified	Images that are produced to facilitate consumption e.g. advertising.
Information	Images for the public good, for an educational or scientific purpose. These images intend to be unambiguous, aiming to clearly communicate an idea, or describe a condition.
Pornography	Material that is designed to elicit sexual arousal. This involves the use of seductive poses and gestures, and commonly, the visibility of what is usually hidden, including areas and functions of the body.
Vernacular	Images that have been produced by amateurs, typically shots of 'everyday life'.

Conclusion

The trajectory of legislation designed to deal specifically with objectionable images of minors is one characterised, to an increasing extent, as a "politically motivated juridification of morality", rather than an effective form of child protection (Sceats, 2002: 145). As the evidentiary status of the image becomes less central to the definition of child pornography, and an increasing number of materials have the capacity to be classified as child pornography, the invisibility of paedophilia and child sexual abuse increases. However, this invisibility is counterproductive to the capacity to pose questions and solve problems. Not only does it obscure the associated dangers and harms but it also inhibits our ability to recognise that beauty, eroticism, and youth are not always a harmful concoction.

The application of the paedophilic gaze only promotes the image of the pornographic child within society, turning all images of children into virtual pornography. The paedophilic gaze is not only problematic for its tendency to produce the pornographic child but it focuses upon how images can be and are consumed, treating children as abstract concepts, rather than material realities. Child pornography, as defined by Australian legislation, is focused upon *representation*, and the representation need not signify or represent a real child in order to be prohibited. Distinct from its original focus upon child protection, child pornography legislation is increasingly used to separate ideas of childhood from perversion. Rather than focusing purely upon content – a naïve practice that assumes that 'visuality' is transparent and we know pornography when we see it; or focusing upon consumption – a questionable practice that asks

the viewer to assume, to pretend, that they can know how another person consumes an image; it is prudent to direct attention to the conditions that produce an image, and the contexts that render particular interpretations 'reasonable'.

The prohibition against child pornography demonstrates the power that images have, to offend against social and individual sensibilities, to "provoke and dismay" (Burnett, 2004: xviii). Visual cultural studies describe the image in a way that is distinct from psychological and legal discourse. However, these descriptions do not necessarily contradict these dominant discourses, as much as they explicate their rationale. WJT Mitchell (2005) proposes that an image's capacity to offend a viewer is symptomatic of particular beliefs about images. The first belief is sympathetic, assuming more than an analogical relationship between the image and what it represents. As a result, "whatever is done to the image is somehow done to what it stands for" (127). This belief is reflected in efforts to curb the sexual abuse of children through the prohibition of child pornography, becoming most pronounced through the criminalisation of virtual child pornography. The second belief is that images are animated and have the capacity to feel, not only can they "feel pain and pleasure", but they have the capacity to act as "responsible and responsive human beings" (ibid.). The prohibition of child pornography, through this lens, becomes a process where images feel a sense of shame when they are 'misused', when they serve the prurient interest. Furthermore, images take pleasure in their display. Accordingly, prohibiting the display or possession of particular images of children suggests that images of children are increasingly understood in the same way as children, they "represent purity, but are also potential victims carefully watched for signs of corruption" (Faulkner, 2011: 11). The Henson incident, among other controversies about the public display of images of children, suggests that both the display and censorship of images has the capacity to elicit a strong emotional response.

Visual cultural studies provides a way of thinking about how representations have the capacity to take on a life of their own, infecting the viewer with their perversion, damaging the morality of the individual and society. The idea that images take on a life of their own, albeit a life that we inscribe into them and they inscribe into us, should be seen as one that is central to human culture. As described by Mary Douglas (1966), "certain moral values are upheld and certain social rules defined by beliefs in dangerous contagion" (3). The threat of contagion facilitates measures such as prohibition and confinement in order to maintain order within society. The capacity to affect a viewer is a process of movement facilitated through contagion. Without contagion this movement is not possible, as images would remain static, meaningless and unable to be recognised as images. Rather than treating images as mere "symbolic propositions" (Gell, 1998: 6), legislators and child protection advocates are increasingly treating representations of children as entities that deserve the protection afforded to children. In turn, rather than simply considering the efficacy of controlling the sexual exploitation of children through the prohibition of images, consideration needs to be given to what sort of rights should be afforded to images, if we concede that they have some form of life. These rights may include not only the right to protection, but also the right to expression. If we dismiss the notion that they have any such life (or 'half-life' as Mitchell describes it), then it begs the question as to why particular images elicit outrage, or sexual arousal, or seem to have any capacity to hold meaning.

The typology that I have proposed attempts to broaden our focus, not upon different kinds of content, but towards other factors that make images intelligible to their viewers. This is important because it addresses the process of recognition, rather than assuming that vision is an objective process. However, it is important to maintain that any system that enables the classification of imagery should not be implemented at the expense of recognising the material realities of child sexuality, paedophilia, and the sexual abuse of children. This typology

demonstrates that the classification of images should not be solely determined by legal and psychological frameworks. Rather, the field of visual culture has the capacity to meaningfully contribute to this debate. The typology described above may not resolve the dialectic of prohibition and recognition. A viewer may be unable, still, to move from seeing images of children to knowing child pornography. However, this typology attempts to lay bare the power relations that are inherent in the production and consumption of images of children, rather than obscuring these important factors through a singular focus upon content.

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Notes

[1] Stewart made this remark in *Jacobellis v. Ohio*, 378 U.S. 184 (1964). This is available online from <http://supreme.justia.com/us/378/184/case.html>. The material in question was the Louis Malle film *Les Amants*. The phrase 'hard-core pornography' is used, rather than 'obscenity' but, in the context of American jurisprudence, prior to *Miller v. California*, 413 U.S. 15 (1973), material that was hardcore pornography was ipso facto obscene. Scholarship that makes use of Stewart's dictum includes Frey, 2004: 5; Heins, 2007: 69; Mackey, 2002: 3-4.

[2] The issue of adolescent sexuality and consent has been addressed in various recent texts. Allen (2005) focuses upon issues of sexual subjectivity and sexual knowledge. Graupner (2004) and Hofmeister (2004) focus upon the tendency to criminalise sexual interactions between adolescents, particularly when that interaction involves the production or transmission of some form of media.

[3] Mark McLelland (2005; 2010) cites the *yaoi* fandom as one at particular risk of censorship, and perhaps even criminal prosecution, from existing Australian legislation that targets child pornography, and plans to 'filter' the internet. However, this fandom is quite distinct from the paedophile networks that these efforts are supposed to target. *Yaoi* is a form of Japanese manga that involves romantic and sexual depictions between males, with one or both of the figures appearing to be a minor. It is similar to *shotacon*, a more sexually explicit and bawdy form of 'boys' love' manga. The fandoms that consume and produce these materials are girls and young women. Similarly, the rival forms that depict female minors, *moé* (romantic stories and images of 'budding' females) and *lolicon* (more sexually explicit stories of images of sexual

situations with figures that appear to be female minors), tend to be comprised of young men, often described as *otaku* (Azuma, 2009). McLelland (2010) also suggests that 'slash' (Jenkins, 1992) fandoms are vulnerable if they involve popular characters that are under the age of eighteen e.g. Harry Potter. Recent cases, like *McEwen v. Simmons & Anor* [2008] NSWSC 1292, which involved illegitimate pornographic images of characters from *The Simpsons*, confirm that, under both NSW and Commonwealth legislation, these fan communities are vulnerable to prosecution because they depict persons who appear to be minors, even when the court does acknowledge that they are imaginary persons. A transcript of *McEwen v. Simmons & Anor* [2008] NSWSC 1292 is available at <http://www.lawlink.nsw.gov.au/scjudgments/2008nswsc.nsf/6ccf7431c546464bca2570e6001a45d2/ef4625a9db3003f1ca25751500066d48?OpenDocument>.

[4] This argument seems to imply that 'child pornography' implies a kind of legitimacy, or neutrality, to a form of media that deserves neither. The earliest expression of this argument that I've been able to locate is within *Child Pornography: An Investigation* by British journalist Tim Tate (1990). He argues that society is "unwilling or unable to grasp the essential truths of child pornography – that it is no more than pictorial evidence of child sexual abuse... child pornography has inherited a spurious aura of titillation – an impression bred in ignorance and fed by our society's fascination for sex – an aura of harmless 'naughtiness'" (p.2). It is worth asking to what extent Tate's claims are spurious, considering that he has a frame from a child pornography video on the cover of his book, showing the face of a young female victim. His own fascination is evident in the inset pictures of the text, showing further images of the sexual assault of the girl featured on the cover. Furthermore, the inset pictorial section includes reproductions of various commercial child pornography publications. Whilst the genitals and undeveloped breasts of the victims are censored with a white bar, their faces are kept on full display. Although Tate is, no doubt, attempting to elicit outrage, rather than arousal, it is still a form of sensationalism, and one that seems insensitive to the victims who he is attempting to save from further injury.

[5] Darknets are encrypted areas of the Internet that bear some resemblance to the world wide web, but require a higher degree of technical sophistication to access and navigate, in comparison to regular web surfing. Although child pornography is reported to be circulated across all areas of the internet, darknets, such as Freenet, allegedly have a kind of architecture that facilitates the growth of online paedophile subcultures (Goode, 2010).

[6] Examples include both textual and cinematic incarnations of *Lolita* (Lee, 2009:101-123; Vickers, 2008: 86-87), the recurring controversies over art photography in the US, UK and Australia (Higonnet, 1998; Marr, 2008; Munster, 2008; Rapoport, 2009; Rubin et. al, 2006), outrage about the bare back of Miley Cyrus (Lee, 2009:21-22) amongst others.

[7] A partial review of the literature includes research such as Adler, 2001, 2006; Akdeniz, 2008; Califia, 2000; Cohen, 2002; Higonnet, 1998; 2009; Kleinhans, 2004, McLelland, 2005; 2010; Mirkin, 1999; Mohr, 2004; Munster, 2009; O'Donnell & Milner, 2007; Ost, 2009; Robinson, 2008; Rubin et. al, 2006; Sonenschein, 1999; Stanley, 1991; 2009; Thompson & Williams, 2004; Williams, 2007; Wilson, 2006.

[8] Images of children around the age of puberty tend to be treated with more anxiety than images of very young children. However, the controversy about Nan Goldin's image, *Klara Edda and Belly Dancing*, in 2007, suggests that even nude images of young children are increasingly interpreted as sexual rather than innocent.

[9] Cooper also suggests that observing gross motor skills is a useful indicator when examining video recordings of child sexual abuse.

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