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The Spotlight Guide to Obscenity

by Brian J. Kelly, Director - Spotlight Division

“In 2023, NCMEC’s CyberTipline received 4,700 reports related to Child Sexual Abuse Material (CSAM) or sexually exploitative content that involved GAI technology (GAI CSAM). GAI CSAM portrays computer-generated children in graphic sexual acts and can be generated at will by the user of certain GAI platforms. GAI can also be utilized to create deepfake sexually explicit images and videos by using an innocent photograph of a real child to create a computer-generated one.”
(National Center for Missing & Exploited Children -

March 11, 2024

<https://www.missingkids.org/blog/2024/generative-ai-csam-is-csam>)

In 2024, the use of GAI to create CSAM became a significant concern, prompting discussions in the media and calls to update current laws. However, creating child sexual abuse material that doesn't involve an actual child has been illegal for some time. 18 USC Chapter 71 - Obscenity of Federal Crimes and Criminal Procedure includes 18 USC 1466A - Obscene visual representations of the sexual abuse of children. This statute covers the production, distribution, receipt, or possession with intent to distribute, a "visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that depicts a minor engaging in sexually explicit conduct." Content identified by the Spotlight Division that may fall under 18 USC 1466A will result in a Spotlight Alert under the criteria of Evidence of a New Law Violation.

Other content that may be considered obscene, using the Miller Test, includes bestiality and stories depicting minors engaging in graphic sexual acts. Such content could then fall under 18 U.S. Code 1462 - Importation or transportation of obscene matters. The Criminal Division of the U.S. Department of Justice has published the [Citizen's Guide to U.S. Federal Law on Obscenity](#). According to the Citizen's Guide, "the act of receiving such matter [obscenity] could violate the statutes prohibiting the use of the U.S. Mails, common carriers, or interactive computer services for the purpose of transportation." The term "interactive computer service" means any information service, system, or access software

provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions (47 USC § 230(f)(2)).

18 USC 1462(a) states "any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character". Would a story depicting children engaging in graphic sexual acts pass the Miller test? In a federal criminal case involving Thomas Alan Arthur, the defendant was indicted on seven counts of obscenity-related crimes for hosting an erotic fiction archive named "Mr Double". The site contained over 25,000 stories by more than 2,200 authors. Arthur's defense contended that the works of "erotic short fiction" had value and should not be considered legally obscene. Experts argued that:

1. There is scientific value to short fiction on taboo topics such as pedophilia, because understanding the fantasies of those with pedophilic desires helps us to protect children from abuse, and better intervene to support people struggling with these desires.
2. There is artistic value to erotic short fiction, in that they appeal to various diverse readerships who may bring satirical, feminist, queer, or other readings to these works.

Arthur was ultimately convicted by a federal jury on January 21, 2021, of three counts of trafficking in obscene visual representations of the sexual abuse of a child, five counts of trafficking in obscene text stories about the sexual abuse of

children, and one count of engaging in the business of selling obscene matters involving the sexual abuse of children.

<https://www.justice.gov/opa/pr/texas-man-sentenced-40-years-prison-running-child-obscenity-website>

The issuance of a Spotlight Alert under the "Evidence of a New Law Violation" criterion does not imply that the Spotlight Division is advocating for or anticipating the use of the information in question for new prosecutions. Rather, it serves as a notification that the content under scrutiny could potentially be in violation of existing laws. The primary goal behind this alert is to equip officers and agencies with the necessary information to implement proactive intervention strategies. These strategies are not limited to punitive measures but can also encompass treatment-oriented approaches, thereby acknowledging the potential for rehabilitation and addressing the underlying issues that may have contributed to the creation or dissemination of the content in question.

Officers can improve the relevance of information received from Spotlight by entering the following information in the Case Details section of each case in the Next Gen interface:

- Offense: arrest/conviction and prior criminal conduct
- Preference: age, gender, details
- Contact with Minors Restriction (YES/NO)
- Organization Affiliation
- Current Areas of Concern

Officers can access and edit Case Details by logging into the IPPC NextGen interface and clicking on the appropriate Case Number.

If a custom RISK word is added to case settings in Next Gen, such as a victim name, officers can add tags to identify those custom RISK words for the Spotlight team. After adding the custom word, click Add Tag and several checkboxes will appear for selection. The current options are:

- Victim
- Officer
- Co-Defendant
- Treatment Provider

Multiple tags can be selected. Please be sure to save settings before exiting.

IPPC Technologies continues to strive towards predictive and proactive solutions so officers can intervene early, address areas of concern and change behavior. Spotlight is a data analysis service provided by IPPC Technologies that uses human verification augmented with artificial intelligence (AI) technologies to validate content captured and flagged by IPPC's monitoring and analysis solutions. Spotlight's mission is to provide agencies and officers with streamlined and verified leads, for possible intervention opportunities related to concerning behaviors. For more information on Spotlight, please call IPPC at (888)-WEB-IPPC or contact me directly at bkelly@ippctech.net or by calling (516)341-4201. Agencies receiving the Spotlight service can give feedback any time via the Spotlight Performance Survey: <https://forms.office.com/r/K9JpsNjKH>



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