

On the prohibition of animated child pornography

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I will, in this essay, discuss the prohibition of animated child pornography and address a number of points. My sources are all the web sources I could find. All of these, are mentioned under "References". Since the quotes are taken from newspapers, unlucky- and misquotes may be found, and the relevant politicians and their respective parties will have the benefit of the doubt.

Animated child pornography is not child pornography

Some may believe the following to be true: "All F G's are G's", but this is incorrect. Certain designations exist, which will make this one false. For instance, think of "All imaginary cats are cats", which is wrong. Imaginary cats do not at all exist, and are, therefore, not cats. It is the same with "All fictional persons are persons", which is also wrong. It is an unlucky quality about the language, that it is possible to create misleading sentences like these.

When one reads the following in *Information*: "A completely legal form of child pornography" which continues "Denmark is the only country in Scandinavia, where some child pornography is legal", one will find it grossly misleading, since animated child pornography is not child pornography. Child pornography is:

"The question of what constitutes child pornography is extraordinarily complex. Standards that are applied in each society or country are highly subjective and are contingent upon differing moral, cultural, sexual, social, and religious beliefs that do not readily translate into law. Even if we confine ourselves to a legal definition of child pornography, the concept is elusive. Legal definitions of both "child" and "child pornography" differ globally and may differ even among legal jurisdictions within the same country.

The legal definition of a "child" varies among nations. The UNCRC defines a child as a person under 18 years of age. This definition, however, is far from being universally adopted. For example, in all Australian States and Territories, child pornography legislation defines "child" as a person under 16 years of age. In Canada (Penal Code Sec. 163), a minor, for purposes of child pornography, is a person under 18 years of age. In various jurisdictions

of the United States (U.S.), minors as young as 15 may legally consent to sexual activity with an adult. However, that same adult could not create, distribute, or possess a visual record of that activity because federal child pornography statutes (18 U.S.C. 2252, 2256) define a minor as any person under that age of 18 years. Despite national differences, some international bodies have been able to arrive at common definitions of child pornography, most of which focus on visual, rather than written material. The Council of Europe defines child pornography as “any audiovisual materials which uses children in a sexual context.” Council of Europe, Recommendation R(91)11 and Report of the European Committee on Crime Problems(1993). International Criminal Police Organisation ("INTERPOL") delegates define child pornography as "the visual depiction of the sexual exploitation of a child, focussing on the child's sexual behaviour or genitals." Interpol Recommendations on Offences Against Minors, INTERPOL 61st General Assembly (1995).” [8]

In these definitions, there is meant (real) children, not animated children. Animated characters have no legal age, as they, funnily enough, don't exist, and has not been born at any point. Given the above definition, animated child pornography is not child pornography, since there are no children in animated child pornography.

One would almost think that the politicians were trying to blur the clear difference between child pornography and animated ditto, when they make statements such as this from Karen Haekkerup:

“»I am completely resistant towards that. I have heard freedom of speech being used for many strange things, but to legalise child pornography through freedom of speech is just grotesque.«”

The statements bears a different sound when adding the necessary distinction:

“»I am completely resistant towards that. I have heard freedom of speech being used for many strange things, but to legalise *animated child pornography* through freedom of speech is just grotesque.«”

Denmark is the only country in Scandinavia that...

It is mentioned several times that Denmark is the only country in Scandinavia that does not have a law against animated child pornography. Let us look at a couple of examples:

“Denmark is the only country in Scandinavia, where some child pornography is legal.

[...]

In some countries, they have witnessed the consequence of this, and among other, both Norway and Sweden have chosen to make animated child pornography illegal.

[...]

In Sweden, where animated child pornography is illegal, websites are a well known phenomenon.

[...]

He is worried that animations will be part of the law, as has been done in Norway and Sweden.

[...]

»It inspires people to abuse children sexually. I certainly think that we should look at how it has been done in those countries, that we usually compare ourselves with,« says Peter Skaarup.”

[2]

“The 'fictional' kind of child pornography is – as opposed to the other Scandinavian countries – allowed in Denmark, but this is completely unreasonable, thinks *Socialdemokratiet*, who have absolute support from *SF* and *Dansk Folkeparti*.”[3]

“Yes, we know that Denmark is the only country in Scandinavia that does not prohibit this. Of course, that is not an argument for Denmark to get it *per se*, but my immediate thought is, that it is absurd that we don't.”[6]

Etc.. Apparently, a great deal of importance surrounds the notion of what has been done in other Scandinavian countries. But why this great emphasis? Why would the following, which Karina Lorentzen Denhardt believes, “»it seems absurd, if Denmark should be the only country to allow animated child pornography«.” be absurd if Denmark was the only country(in Scandinavia? The world?) without a law against animated child pornography?

Could it not be possible that these other countries having such a law, is a mistake? I see no reason to believe that it is a good idea to introduce a law like that, just because Norway and Sweden has introduced a similar law.

If the politicians do not think, that the other Scandinavian countries having a law against this, is a good idea, how come they keep mentioning it (according to the last quote)? On the other hand, Peter Skaarup was close to something better, when he stated “I certainly think that we should take a look at how it has been done in those other countries, that we usually compare ourselves with”. It could be the case, that these laws do not help at all in the other countries, and therefore, in the best case scenario, is a waste of time and money to introduce.

Reasoning for introduction – Puritanism or rational politics?

What is the real reasoning or motivation for imposing this law, and similar laws? Is it enough that the majority of the population finds something to be in bad taste? If that is the case, then we should start by banning a number of other kinds of pornography which the majority finds unsavoury, and possibly several books, films and the likes, too. I see no reason to believe, that just because the majority finds something to be in bad taste, this is a requirement to ban it. But it could look like certain politicians are trying to use a “bad taste”-argument to get the law through the system.

Consider:

»Then, my personal opinion is that child pornography is a phenomenon so atrocious, that we absolutely have to intervene further,« says Lars Hedegaard of Trykkefrihedsselskabet (Company of Freedom of Press).[5]

If one reads closer in the articles I have been able to find, one will not find a single definite inquiry, but, at the most, a few vague or blurred expressions regarding unnamed “scientists” or unidentified “research”. However, one expert in the field is mentioned. Let us begin with a few examples of the former:

“Scientists indicate that animated child pornography can have the exact same effect on potential violators, as real child pornography. Research in violation behaviour shows, that the use of child pornography can be used as a slippery slope towards paedophiles committing real assaults.”[1]

Which scientists? What research? This is like giving the reason “the wise people say...” for one's beliefs, but a reason such as this one is useless. Which wise people say what?

“Practitioners indicate that the animations can lead to use of real photos, and, at some point, abuse of children.”[2]

Which practitioners? Notice the plural form. Only one practitioner is even mentioned in the article. To use appeal of authority, one should establish the consensus among relevant experts, but this

seems not to have been done. Just one or more experts have been found who agreed with the opposing side, and these have then been interviewed. This will not work as reasoning for introducing laws of any kind. I am not familiar with the consensus, if there even is one regarding whether child pornography is harmful i.e. causes people to violate children (and to which degree?). One should, at least, have a few scientific inquiries which strongly indicate this, before removing peoples' freedom. I do not know of any such inquiries, and no concrete tests are mentioned in all articles I could find about the subject. Not even in what one would expect to be a valid text, which is the proposal to the government. [1]

All you find is, more or less, speculative theories about what animated child pornography can cause. Consider:

“Scientists do point towards that animated child pornography can have the exact same effect on potential violators, as the 'real' child pornography can.

When the paedophiles discover that others have the same fantasies about children, then it is especially that solidarity, that can push possible violators toward real assaults.”[2]

“»People who watch animated child pornography, stay in a violation behaviour, and are not confronted with, that it is illegal to do those things in the real world. That is why it can lead these people towards regular child pornography and real violations«, says Karen Haekkerup, spokeswoman of *Socialdemokratiet*.” [3]

“»They will not be able to separate fantasy from reality, and will, like that, be sucked into the universe in question, and become so occupied with it, that they will want to try it for real.«” [4]

“»It will not just stay in their imagination, and that is why we need to close that hole in the legislation.«” [5]

“Research into violation behaviour indicated that the use of child pornography can work as a slippery slope towards the paedophiles committing serious assaults. Psychologist and scientist at the Sexological clinic of *Rigshospitalet*, Thomas Hammerbrink, believes that the animations can be a chain in that process. He is quoted for saying: “The paedophile will reach a point, where it will not just be enough in itself to watch child pornography. It will accelerate, and some buckle, and end up violating children. I can not see why the animations should not have precisely the same effect on potential violators.”” [6]

Consistent with all of the above quotes, there is a theory that scientific evidence is not at all the motivational factor for the politicians to introduce/support such laws, but more their own puritanism, their resistance against what they think to be disgusting or distasteful.

According to the theory, these unnamed scientists(unless they all refer to Thomas Hammerbrink) are all post rationalisations, something which people are good at creating.

From my point of view, there is not enough evidence, neither for believing that there is a connection between animated child pornography and actual abuse of children, nor for believing such a post rationalisation theory. Time will tell.

Slippery slope arguments(SSA)

Many adversaries of the proposal express slippery slope arguments. SSA's work by pointing out, that if one does x, then that choice opens up for y, z, t, s etc. and that y, z, t and s are bad. Consider these examples:

“»If we want to ban animations of this type, then we are creeping closer to what could look like official censorship,« says substituting political spokeswoman, Tina Nedergaard.” [5]

“Lawyer Bjoern Elmquist does not believe that a tightening of the law is the way to go. He is lawyer and chairman of *Retspolitisk Forening*(Political Law Society), which is an organisation of lawyers who fight for maintaining the citizens' rights security. He is worried about including animations in the law, like it has been done in Norway and Sweden, because he believes that it will have consequences for freedom of speech and the security of rights.

»What about violent films? Or video games? Would it be fair, that in one scenario, it is completely without punishment to shoot 30 people in a videogame, but seeing someone take the pants of a drawn child, is to be punished?« says Bjoern Elmquist.

»It is invalid that such a difference in the law is to exist. That would mean having to makes laws for everything.«

Same concern can be found with Thomas Thorhauge, chairman of Danish Cartoon Counsel, who is a newspaper illustrator and cartoonist himself.

»I am a father myself, and can fully appreciate that some people feel offended from animations like these. But then, where will the line go of what one can draw, and what one cannot?« he asks. Thomas Thorhauge is troubled by the thought of intensifying the law. He is especially worried about the art being caught in between, if the law is tightened.” [2]

The underlying point is, that if you prohibit animated child pornography just because it *can*(in some undefined sense) 'inspire' paedophiles to abuse children, the you should also, per analogical reasoning, prohibit violent games, books and in a wider sense, fiction where a person you can identify yourself with, commits illegalities, because it *can* inspire people to commit illegalities.

There does not seem to be any boundary for what can eventually be prohibited, if arguments like those above are good enough for banning something. It seems that this is the first step towards total governmental control of culture, depending on what can be said to 'inspire' illegalities.

Consider:

“Justice spokesman Tom Behnke is hesitant to support the prohibition.

»When we are talking child pornography, it is something that we take very seriously. The sins must be punished hard and consistently. Men when we are talking animated child pornography, it is a different situation. After all, it is fictional, and no children have suffered or been hurt in the creation of the material – unlike real child pornography«, he says.

[...]

Tom Behnke, in the meantime, asks for composure, and notes that this is about the children – not the thoughts.

»It is a victimless situation, and that is why I am somewhat skeptical towards this proposal. Because what is it, exactly, that you punish for? The next thing will be looking into peoples' heads and punishing them for their thoughts«, says the conservative spokesman.

[...]

But the scientific proof already exists, says psychologist with *Red Barnet* (Save the Children Denmark), Kuno Soerensen. There is, in fact, a risk that the sexual actions that the children are exposed to on sketches and in films, can inspire some to try it in reality.

»Research shows that a vulnerable group can be affected by this«, he states.

[...]

Similar mechanisms are seen with people who play violent games, read anorexia manuals or deepen themselves in racist and nazi texts on the internet, tells Kuno Soerensen.

»They will not be able to separate fantasy and reality, and will, because of that, be sucked into the universe in question, and become so obsessed with it, that they will want to try it for real.« [4]

One would almost think that Kuno Soerensen was trying to make my point about the slippery slope. He, himself, mentions the very things that could be banned as well, with similar reasoning.

Let us say, hypothetically, that animated child pornography causes assaults

Does it then follow that we should prohibit it? No. It would still be a question of weighing the consequences.

First of all, would such a law help? It has been mentioned that one could shut down or block such websites, men such blocks are incredibly easy to pass, and if a person wanted to pass them, he would easily be able to. It is not possible to block content on the internet without a considerable amount of surveillance (e.g. in China), or a total restructuring of the entire internet. This becomes even clearer when considering that people can do things to pass this surveillance and control. Alternative DNS servers, proxy servers and VPN connections make it impossible to monitor and control people on the internet, with the internet as it is at the moment.

People with more knowledge than me, can, without a doubt, mention more small ways to pass most blocking systems.

Has it been researched whether the animated child pornography has been harder to access in Norway and Sweden? This seems highly relevant, and the answer is quite possibly “no” because of the things I mentioned above.

Second of all, regardless of whether the law will work(i.e. reduce assaults on children), it must be considered if it is reasonable to introduce it compared to the things that will accompany it. If the law only works to a lesser degree, but entails great costs because of the increased monitoring and control, then it should be considered if there is a more effective way to spend the money, such as improving the treatment of paedophiles, who rarely only molest children once, but instead, a number of times. This is a question of price/effect in a metaphorical sense.

Consider the following quote from the American Supreme Court:

"The Government submits further that virtual child pornography whets the appetites of paedophiles and encourages them to engage in illegal conduct. This rationale cannot sustain the provision in question. The mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it. The government cannot constitutionally premise legislation on the desirability of controlling a person's private thoughts. First Amendment freedoms are most in danger when the government seeks to control thought or to justify its laws for that impermissible end. The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought.

To preserve these freedoms, and to protect speech for its own sake, the Court's First Amendment cases draw vital distinctions between words and deeds, between ideas and conduct.

The normal method of deterring unlawful conduct is to impose an appropriate punishment on the person who engages in it. The government may not prohibit speech because it increases the chance an unlawful act will be committed at some indefinite future time.

The government may suppress speech for advocating the use of force or a violation of law only if such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

There is here no attempt, incitement, solicitation, or conspiracy. The Government has shown no more than a remote connection between speech that might encourage thoughts or impulses and any resulting child abuse. Without a significantly stronger, more direct connection, the Government may not prohibit speech on the ground that it may encourage paedophiles to engage in illegal conduct."(some parts omitted)[7]

There are wise words among the above, even if some parts are irrelevant to Danish politics, since our constitutions are dissimilar.

Symbolic politics

Lastly, one should consider if a reason for some politicians to be after the animated child pornography, is to send a message to the population that these politicians are not bread-and-butter politicians who do not do anything, but who are actually trying to make a difference. Such symbolic political actions are, in some cases, directly harmful to society. I will not further this point, but take a look at this essay. [9]

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