

明光社

The Society for Truth and Light

九龍旺角彌敦道 701 號番發大廈 15 樓

15/Floor, Punfet Building, 701 Nathan Road, Mongkok, Kowloon 電話 Tel:27684204 傳真 Fax:27439780 電郵 E-mail:info@truth-light.org.hk

明光社就《防止兒童色情物品條例草案的意見》 5/2002

鑑於市面上色情刊物有日益泛濫的趨勢,一些商人唯利是圖,妄顧社會責任,經常刊登嫖妓指南、推介色情場所及各種變態的性行爲,令心智未成熟的青少年,以及一些意志薄弱的成年人亦受到影響。尤有甚者,更以兒童作爲色情物品的主角,除對有關兒童的身心造成深遠的傷害外,亦會間接助長不良的社會風氣(如兒童性侵犯),因此,本社支持盡快立法,以堵塞有關兒童物品,兒童色情表演和涉及兒童的性旅遊活動等各種罪行的漏洞。對於有關條例草案,我們有幾點初步意見:

1 本社同意有關法例的主要精神:

- a 把製作、生產、發佈、進口、出口、分發、宣傳和管有描劃未滿 16 歲兒 童的色情物品列爲罪行。
- b 把利用、促致或提供未滿 18 歲的人製作色情物品或作色情表演的行為 刑事化。
- c 把某些性罪行條文的適用範圍擴大至香港以外侵犯兒童的行為,並禁止 就干犯這類行為作出安排,以及禁止關於該等安排的宣傳。

有關兒童色情物品所帶來的禍害,外國亦有不少研究和討論,例如:

(*下文只爲意譯其重點)

A) Virtual Porn, Real Corruption The Court's reasoning

http://www.nationalreview.com/20may02/editorial052002b.asp

兒童色情物品所帶來的傷害不只是製作過程中被剝削的兒童,它對整體社會 的道德操守都構成傷害。它會使到那些喜歡與兒童有性關係,及將兒童性化 的人認爲法律並不反對他/她有如此的性慾望及行爲,甚至以爲社會容忍這 類性傾向的次文化。如此令到整體社會道德下降只是引致更多其他兒童受到 傷害。

There is also the harm to public morality, and to the many other children who will suffer if that morality declines — if people who are attracted to sex with children, and the sexualization of children, are told that the law does not frown on this desire and behavior and that it even tolerates a subculture oriented around this desire. The making of "virtual" pornography inflicts *that* harm just as much as pornography involving actual children does.

B) Research on the effects of child pornography is needed

BY STACIE A. CASS AND MARGARET BULL KOVERA, PHD Florida International University

http://www.apa.org/monitor/apr01/jn.html

The District Court for the Northern District of California argued that although children are not directly harmed in the computer generation of child pornography (e.g., the morphing of a child's face on an adult's body), the government had an interest in protecting society from the secondary effects of child pornography. Specifically, the Court expressed concern that the computer-generated material could excite pedophilic interest or could be used by pedophiles to entice or encourage children into sexual activity.

C) The Effects of Pornography and Sexual Messages

http://www.nationalcoalition.org/pornharm.phtml?ID=102

Child Pornography

於美國,一般兒童性侵擾者都是透過網上 chat room,與兒童建立友誼及信任的關係,著接透過陳列兒童色情物品嘗試去令到兒童以爲這類行爲是可以接受的,以及誘騙他/她(兒童)去參與。結果被剝削及虐待(abuse)的受害者長期都活於掙扎與恐懼中,恐怕自己的照片依然於仿間流傳。

The typical child molester befriends the child, often through Internet chat rooms, and, after building "trust," exposes the child to pornography. This is done in attempt to make the child think that this behavior is acceptable and to lure him or her to participate. The experience of exploitation and abuse becomes a lifelong struggle for the victim and leaves them with the fear that their photos are still out there.

D)以下摘自 "Child Pornography: What Happens When They Grow Up"

http://www.nationalcoalition.org/sandra.phtml

兒童色情物品對兒童所造成的傷害

● 被欺騙參與製作兒童色情物品的兒童會引致長時期心理上的羞恥、抑鬱,以及強烈自卑的感受。

- 他/她不感告知他人自己所受到的傷害,因爲以爲別人會覺得他/她的 行爲是咎由自取。
- 他/她會很懼怕不知有什麼人、會否有認識他/她的人曾看過他/她的 照片,不知道那些看他/她照片的人會如何想他/她。
- 受害人感受到自我的價值像不停地被人降低。
- 兒童色情物品其中一個特別的影響就是受傷害的兒童成長後仍不停地 意識著他/她兒時的照片仍在坊間大量地流傳,不知有多少人仍然正在 看他/她的照片,甚至利用他/她的照片去欺騙其他兒童。
- 他/她根本不能控制守著他/她過去的秘物及所受到的傷害。他/她的 傷害似永遠不能過去般,一生都要背負著這擔子。
- 2 對於法例其中一個主要爭論點,將兒童色情物品定義爲「**對兒童或看似兒童的人作色情描劃**」 "a pornographic depiction of a person who is or appears to be a child" , 本社認爲參照美國在爭論類似問題時的經驗 (註),若沒有了「**看似兒童**」估計會有如下的影響:

註:有關資料參考以下網址:

http://crime.about.com/gi/dynamic/offsite.htm?site=http://www.wired.com/news/politics/0% 2C1283%2C52285%2C00.html

兒童色情物品,無論是虛擬、類似或真實,都是對兒童造成傷害。若沒有法 例禁止將繁衍大量兒童色情物品。

"Child pornography -- virtual or otherwise -- is detrimental to children," says Rep. Lamar Smith (R-Texas), chairman of the House crime subcommittee. "Without amending current law, we face a proliferation of child pornography." 互聯網上大量發放有關兒童色情的資訊,已是現今戀童僻者和性掠奪者的重要工具。將所有形式的兒童色情資訊消除及保護兒童免除性方面的剝削應是政府首要的關注。

"The Internet has proved a useful tool for pedophiles and sex predators as they distribute child pornography, engage in sexually explicit conversations with children, and hunt for victims in chat rooms.... The elimination of child pornography in all forms and the protection of children from sexual exploitation should be one of Congress' highest priorities," says Smith, who introduced the COPPA bill.

任何被控告違反兒童色情條例的人都可聲稱該圖像是從合法的成年人用技術修改過來的。

Michael Heimbach, the chief of the FBI's Crimes Against Children Unit, said that the Supreme Court's decision will "pose a substantial impediment to child pornography prosecutions now and in the future" because anyone charged with being a child pornographer will simply claim the illicit images were morphed from legal adult snapshots or video.

若沒有「看似」一類的字眼,可能令到那些真正擁有兒童色情圖片的人,由於不能確認到兒童的真實年齡(例如證據被消毀)而逃過被起訴,繼續傷害更多兒童。

Heimbach said that the traditional requirement of an actual minor being harmed would hinder convictions. "The foreseeable and tragic result will be that offenders who possess images of real, but unidentified, children will escape prosecution and will continue to use such material to harm still more innocent children," he said.

最後,美國國會建議將「**看似**」改用「**與兒童幾乎分別不到**」"**virtually indistinguishable** from that of a minor engaging in sexually explicit conduct."

*美國的法例限制是18歲以下的。

- 3 爲達到真正保障兒童的目的,有關法例宜緊不宜寬,避免有人故意利用法律漏洞,以一些已超過 16 歲的人士扮演 16 歲以下的兒童,或以一些未滿 16 歲的兒童冒充 16 歲以上的人士,間接進行兒童色情表演。本社同意使用「與兒童幾乎分別不到」"virtually indistinguishable "代替「看似」" appears to be"
- 4 對於有人擔心有關法例會影響藝術創作,本社同意可引用法定的免責條款,若經審裁處評定爲有藝術價值,仍然可以向成年人展示(即電影須列爲三級,其他物品則應列爲第二類,不能向 18 歲以下人士展示)。若有真正的教育、科學或醫學目的,則可向 18 歲以下人士展示(其情況與現時處理電視節目中的裸露鏡頭相類似)。
- 5 最後本社希望政府及立法會議員能盡快處理有關法例,以免有更多兒童因現行法例的漏洞而受到不必要的傷害。切勿重蹈《淫褻及不雅物品管制條例》的覆轍,公開諮詢兩年之後,仍然石沉大海,連何時將修訂後的草案提交立法會亦音訊全無,繼續縱容一些無良商人,以言論自由爲藉口,肆無忌憚地向 18 歲以下的青少年散播色情資訊。