

THE CHILD PORNOGRAPH (PREVENTION) ACT

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THE CHILD PORNOGRAPHY (PREVENTION) ACT

Act
13 of 2009.

[20th October, 2009.]

1. This Act may be cited as the Child Pornography (Prevention) Act. Short title.

2.—(1) In this Act—

Interpreta-
tion.

“child” means a male or female person under the age of eighteen years;

“child pornography” means—

(a) any visual representation that—

- (i) shows a person who is, or is depicted as being, a child and is engaged in, or is depicted as being engaged in, sexual activity;
- (ii) depicts, for a sexual purpose, the genitals, breast, pubic area or anal region of a child; or
- (iii) depicts a child being subjected to torture, cruelty or physical abuse in a sexual context;

(b) any audio recording or written material that has as its dominant characteristic the description, presentation, or representation, for a sexual purpose, of sexual activity with a child; or

(c) any visual representation, audio recording, or written material, that advocates or counsels sexual activity with a child;

“sexual activity” means actual or simulated—

(a) sexual intercourse;

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(b) activity other than sexual intercourse, whether involving persons of the same or opposite sex—

(i) involving the penetration of the anus, vagina or mouth with any part of a person's body, or the anus or vagina with anything else; and

(ii) which a reasonable person would consider sexual;

(c) touching of a sexual organ, or the anal region, of a person with any part of the body, or with or through anything else, in a manner which a reasonable person would consider sexual;

(d) bestiality;

(e) masturbation; or

(f) sadistic or masochistic abuse;

“visual representation” includes—

(a) any image, whether made or produced by electronic, mechanical or any other means;

(b) undeveloped film;

(c) videotape; and

(d) data stored in electronic form capable of conversion into a visual image.

(2) For the avoidance of doubt, in paragraph (a) of the definition of “child pornography” in subsection (1), the reference to a person shall be construed as including a reference to an image resembling a person, which has been generated or modified electronically or otherwise, and any evidence that some of the principal characteristics shown may be those of an adult shall be disregarded, if the predominant impression conveyed is that the image shown is that of a child.

3.—(1) A person who knowingly causes or incites the involvement of a child in the production of child pornography, in Jamaica or elsewhere, commits an offence.

Using or involving a child in the production of child pornography.

(2) A person who, having the custody, charge or care of a child, allows the child to be used in the production of child pornography, in Jamaica or elsewhere, commits an offence.

(3) A person who commits an offence under this section is liable, on conviction on indictment before a Circuit Court, to a fine or to imprisonment for a term not exceeding fifteen years, or to both such fine and imprisonment.

4.—(1) A person commits an offence who knowingly—

Producing, distributing, etc., child pornography.

(a) produces child pornography;

(b) distributes, imports or exports child pornography;

(c) distributes any advertisement likely to be understood as conveying that the advertiser or any other person produces, distributes, imports, or exports, any child pornography; or

(d) possesses any child pornography for the purpose of distributing, importing, or exporting it.

(2) In this Act, distributing child pornography includes selling it or publishing it in any form, and parting with possession of child pornography by exposing or offering it for acquisition by another person.

(3) A person who commits an offence under—

(a) subsection (1)(a) is liable, on conviction on indictment before a Circuit Court, to a fine or to imprisonment for a term not exceeding twenty years, or to both such fine and imprisonment;

(b) subsection (1)(b), (c) or (d) is liable, on conviction on indictment before a Circuit Court, to a fine or to imprisonment for a term not exceeding fifteen years,

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or to both such fine and imprisonment.

Possessing or
accessing
child
pornography.

5.—(1) Subject to subsection (4), a person who knowingly possesses child pornography, in circumstances other than those specified in section 4(1)(d), commits an offence under this section.

(2) Subject to subsection (4), a person who knowingly accesses any child pornography commits an offence under this section.

(3) For the purposes of subsection (2), a person accesses child pornography if that person causes child pornography to be viewed by, or otherwise read, heard or transmitted to, that person.

(4) No person shall be liable for an offence under this section if that person shows that—

(a) he had not seen, read or listened to the child pornography concerned and had no reasonable cause to suspect that he was in possession of it or had accessed it;

(b) upon having reason to suspect that he had come into possession of, or accessed, child pornography, he promptly—

(i) took reasonable steps to avoid, remove or destroy the child pornography; or

(ii) reported the matter to—

(A) the Children's Registry in accordance with the provisions of the Child Care and Protection Act; and

(B) a member of the Jamaica Constabulary Force,

and allowed access to the child pornography for the purposes of the enforcement of this Act or any other law; or