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**Criminal Realism:
Virtual Child Pornography, Photorealism and the
Legislation of the Virtual Animated Body**

Introduction

In The Society of the Spectacle

example of the kind of controversy that can erupt at the intersection of the real and the virtual body.

Virtual child pornography, a pernicious by-product of recent technological advances in digital imaging, is a relatively new genre of pornography that features sexually explicit computer-generated images of children. By the mid-1990s virtual child pornography was identified as a global problem and countries such as Great Britain and Canada amended their child pornography laws to address both “actual” and “apparent” child sex images, criminalising indecent digital “pseudo-photographs.”² As P.J. Huffstutter, staff writer for the *Los Angeles Times* observed, “between the clearly fake world of pornographic cartoons and the clearly real realm of actual children engaged in lurid sexual acts sits the amorphous field of ‘virtual child pornography.’”³ In 1996, at the urging of conservative Utah Senator Orrin Hatch and others, Congress passed the Child Pornography Prevention Act (CPPA), a law that banned “virtual” child pornography, i.e. pornography created using digital images or computer animation rather than real children. In April 2002 the United States Supreme Court found this ban unconstitutional, a decision that reawakened public debate on this controversial and emotionally-charged issue.

In reviewing the testimony presented to Congress in support of the Child Pornography Prevention Act, the opinions written by Supreme Court Justices, and the popular media coverage that followed the April decision, one thing becomes abundantly clear: embedded within this desperate appeal for an effective means to combat the new digital dangers facing America’s children is an equally desperate call for a mechanism to control the production of a new and threatening kind of image—the criminal, the fake,

mass medium.⁶ In addition, by the mid-1990s Hollywood productions such as *Terminator 2* (1991), *Jurassic Park* (1993) and *Forrest Gump* (1994) were astonishing audiences with the quality of their digital effects and the high degree of *perceptual* or *photographic realism*

With the high-quality realism produced in Hollywood computer animation as a reference point, proponents of the Bill argued that photorealistic virtual child pornography was just as dangerous as photographic or filmic pornography that uses actual children. Invoking the logic that criminal images lead to criminal acts, they suggested that although children were not actually harmed in the production of virtual child pornography, these images would encourage predators to live out their foul fantasies on real kids.¹⁰ Asserting a legal and moral equivalency between the “real” and the “realistic,” Taylor went so far as to state, “Tomorrow’s victims and their parents, and all of us, can see [that] child pornography is child pornography. It is irrelevant whether it is ‘real’ or ‘apparent,’ whether it is an actual crime scene photo or a realistic fake.”¹¹ Concurring with Taylor’s assessment, Senator Hatch concludes, “In short, the harm to our society is no less than it would be if this filth was produced using real children.”¹²

Although opposed by a wide range of groups—from librarians and law professors to artists and adult filmmakers—Congress passed the law in 1996, finding that

new photographic and computer imaging technologies make it possible to produce...visual depictions of what appear to be children engaging in sexually explicit conduct that are virtually indistinguishable to the unsuspecting viewer from unretouched photographic images of actual children engaging in sexually explicit conduct.¹³

because they possessed the same aesthetic qualities (i.e. photographic realism) as photographs or live-action film. “Protected speech,” he wrote, “does not become unprotected merely because it resembles the latter.”¹⁷

In defence of the photographic

There are a number of interesting issues that one could explore in a critical analysis of the virtual child pornography debate. On one level, the controversy is evidence of a deep cultural anxiety around the figure of the child and contemporary constructions of childhood sexual innocence. On another level, the law provides a telling example of the extensive structural mechanisms our society develops for the control and regulation of sexuality and desire. It would also be interesting to explore the historically cyclical nature of the technophobic rhetoric used to condemn the new digital imaging technologies (rhetoric which, ironically, is quite similar to that used to describe the potential dangers of photography over one hundred and fifty years ago). This analysis, however, will focus on the way in which the legal furore that raged around virtual child pornography is an expression of a more general cultural anxiety regarding the shift from photographically recorded still and moving images to the digitally created image.

The testimony of Mr. Taylor, the lawyer cited previously, provides numerous examples of this anxiety. Taylor warns members of the House Judiciary Committee of the terrifying technological advances that await us. He describes computer images that “can and will be made to look so real that the eye cannot tell the difference” and virtual reality experiences designed to trick the eye and “fool the senses.”

It has been true up to this point in history that no painting or artistic skill or early computer graphics techniques could create an image that was imperceptibly

indistinguishable from an actual person engaged in past actions. The material could and did “speak for itself”... It is conceivable that the day is here or near when common knowledge proves that computers can do the sleight of hand that tricks the eye and confounds the mind of the viewer... The real and the apparent become...equally dangerous...¹⁸

Beneath the generalised technophobia of Taylor’s testimony—which speaks of a technological black magic, a digital sorcery all the more dangerous because of its easy availability and democratic nature—we can discern a very palpable fear regarding the possible effect new digital imaging technologies could have on his relationship to the image-world and everyday experience. For Taylor, the potential *indistinguishability* of the photorealistic digital image has initiated a disorienting loss of faith—a loss of faith in the evidentiary and indexical nature of the photographic, in the notion that vision can provide us with objective knowledge of and control over the world around us, and in his own ability to determine truth from fiction. Taylor’s fear and frustration is not solely with a world in which the paedophile eludes control, but a world in which seeing is no longer necessarily believing.

The persistent power of the photographic

The passion with which Taylor defends the ontological certainty of the photographic, while simultaneously warning about the dangers of the digital, is evidence of the continued power of the photographic in what some have called the *post-photographic* era. In contrast to the “magical” and deceptive digital technologies described by Taylor, Hatch, and other supporters of the CPPA, photographic technologies—including both the still and moving image¹⁹—have tended to possess an aura of objectivity and truthfulness. Media scholars such as Susan Sontag and William Mitchell have discussed the

ideological power that the photographic draws from its supposedly evidentiary and indexical nature.²⁰ Writing in 1973, Sontag asserts that photographic images have virtually unlimited authority in a modern society and the scope of this authority, she argues, “stems from the properties peculiar to images taken by cameras.”²¹ As William Mitchell so aptly describes

The photograph is fossilized light, and its aura of superior evidential efficacy has frequently been ascribed to the special bond between fugitive reality and the permanent image that is formed at the instant of exposure. It is a direct physical imprint, like a fingerprint left at the scene of a crime or lipstick traces on your collar.²²

The photograph is not only assumed to possess this special, indexical bond with reality (a bond that seems to ensure the “honesty” of the image), but it is also understood as having expanded our basic ability to perceive that reality. In his famous essay, “The Work of Art in the Age of Mechanical Reproduction” Walter Benjamin describes the camera’s ability to expand the human experience of perceptible reality and surgically explore this intricate world. For Benjamin, film and photography allowed a deepening of optical apperception.²³ “A different nature opens itself to the camera than to the naked eye....”²⁴ While psychoanalysis revealed new dimensions of depth in human consciousness, photography was able to isolate and make analysable “things which had heretofore floated along unnoticed in the broad stream of perception,”²⁵ opening up what Benjamin called the *optical unconscious*.

However, while the photographic camera created new and expanded access to the perceptible world, it also transformed the relationship between the perceiving subject and her reality. Sontag sees this relationship as bound up with notions of consumption, acquisition, possession and control. The photograph gives people an imaginary or

symbolic sense of possession over the thing, the person, the experience, or the place it depicts.²⁶ For Sontag, the world possessed through photographs is a world reduced to fragments of information, thin slices of time and space, which can then be classified, catalogued and filed away for future reference.²⁷

Reality as such is redefined—as an item for exhibition, as a record for scrutiny, as a target for surveillance. The photographic exploration and duplication of the world fragments continuities and feeds the pieces into an interminable dossier, thereby providing possibilities of control that could not even be dreamed of under the earlier system of recording information: writing.²⁸

pyramids at Giza featured on the February 1982 cover of *National Geographic*.

Apparently the pyramids were situated too far apart to fit on the magazine cover, so the original image was digitally altered to fit them on the page. Kevin Robins suggests that “alterations” and deceptions such as this affect the basic status of the photographic image.

He writes:

the status of the photographic document as evidence is thus called into doubt. Whole new vistas are opened up for the manufacture of fakes, fabrications and misinformation. The relationship between the photographic image and the “real world” is subverted.³¹

By 1990 even the *New York Times* was predicting that the reign of the photographic was ending, as well as the viewing subject it constructs. Suggesting that the time is near when readers of magazines and newspapers will know that they cannot rely on the image to be genuine, the columnist concludes, “In short, photographs will not seem as real as they once did.”³² The digital image is, as Peter Lunenfeld asserts, the “dubiative image,”³³ the image “inclined or given to doubt.”³⁴ However, because the *photorealistic* image has become virtually indistinguishable from the *photographic* image, its dubiousness has infected the photographic, undermining our faith in its veracity.

Although the shift from analogue to digital, from indexical to “dubiative,” has been framed in terms of loss, mistrust, and insecurity in the context of child pornography law, not everyone conceives of this shift as a negative development. Indeed, given the

the digital image, Mitchell sees the emergence of digital imaging as “a welcome opportunity to expose the aporias in photography’s construction of the visual world, to deconstruct the very ideas of photographic objectivity and closure, and to resist what has become an increasingly sclerotic pictorial tradition.”³⁵

However, Mitchell also observes that individuals embedded in the institutions whose viability is based on the reliability of the recording instrument, such as the criminal justice system, will vigorously defend the “hegemony of the standard photographic image.”³⁶ And, in fact, this is precisely what we see in the U.S. Government’s case supporting the Child Pornography Prevention Act. In an effort to deal

techniques it would be considered a criminal image. Critiquing the logic of this law, Judge Molloy observes:

As discussed earlier, the indexical quality of the photograph—its almost physical connection to the object it depicts—has long engendered a sense of intimacy, a sense of closeness and proximity between image and object. In his famous essay “The Ontology of the Photographic Image,” Andre Bazin describes the photographic process as involving a transfer of reality from the original object to its copy; this process allows the image to, in an almost literal or material sense, *become* the original.

Only a photographic lens can give us the kind of image of the object that is capable of satisfying the deep need man has to substitute for it something more than a mere approximation, a kind of decal or transfer. The photographic image is the object itself, the object freed from

Conclusion

The ban on the morphed image provides yet another illustration of the fact that the CPPA was not only designed to protect children, but to defend the photographic's claim as the aesthetic of the "real" and to safeguard viewers from the unsettling possibilities of the digital. As the animated body encroaches upon the real body and as the digital image encroaches upon the photographic, we are seeing an attempt to legislate and control the shifting relationships between these bodies and images. In this case, as I have argued, we see these anxieties being dealt with through a criminalisation of new imaging technologies and the *counterfeit realism* they produce. As Harris Mirkin observes, while some countries have used the threat of forbidden political ideas as the impetus to place controls on new technologies, "In the United States attempts at control have focused on sexual images, and the issue is being used to bring the structure of the new information technologies under the control of regulators."⁴⁶ Thus, while this legislation may represent a justifiable attempt to deal with the impact that new technologies may have on our ability to protect children(a)4.uIact that1tTJ-18.1009 Tw[(As the6(w)]TJ1(u)0hwg).u

¹⁴ S. 1237, 1995, Date of Introduction September 19, 1995, Date of Version, August 1, 1996, Section 3, Definitions.

¹⁵ Opinion of Donald W. Molloy, United States Court of Appeals for the Ninth Circuit, on *The Free Speech Coalition, Plaintiffs-Appellants, v. Janet Reno, Attorney General, United States Department of Justice, Defendants-Appellees* (Argued March 10, 1998, Filed December 17, 1999).

¹⁶ Opinion of Justice Kennedy, 122 Supreme Court of the United States, on *John D. Ashcroft, Attorney General, et al., Petitioners v. The Free Speech Coalition et al.*, (Argued October 30, 2001, Decided April 16, 2002.)

¹⁷ Ibid.

¹⁸ Testimony of Bruce A. Taylor, President and Chief Counsel of the National Law Center for Children and Families. Senate Committee on the Judiciary, *The Child Pornography Prevention Act of 1995: Hearing on S. 1237*, 4 and 5 June 1996.

¹⁹ At this point D2t.R1Aad 5 JunyR1A

³¹ Kevin Robins, “The Virtual Unconscious in Postphotography,” in Timothy Druckrey, ed., *Electronic Culture: Technology and Visual Representation* (Aperture Foundation, Inc., 1996), 156.

³² Mitchell, 17.

³³ Peter Lunenfeld, *Snap to Grid: A User’s Guide to Digital Arts, Media, and Cultures* (Cambridge, Massachusetts: The MIT Press, 2000), 61.

³⁴ Lunenfeld, 61

³⁵ Mitchell, 8. Paul Willeman offers a compelling response to Mitchell’s celebration of the subversive potential of the digital image, as well as an alternative position on the politics of the photograph in “Reflections on Digital Imagery: Of Mice and Men” (*New Screen Media: Cinema/Art/Narrative*, London: British Film Institute, 2002). Willeman discusses the negative political implications of the loss of the indexicality associated with photography and cinema, however from a very different perspective than the proponents of the CPPA. Dai Vaughan suggests that photography’s link to the material world can act as an “impediment to the word of authority.” “It is surely not fortuitous,” he writes, “that the age of the chemical photograph has broadly coincided with that of mass democratic challenges to entrenched power.” Willeman notes suggests that the draining away of the indexical dimension of the image through digital manipulation is anti-democratic because “it makes the administrative control of ‘meaning’ easier by facilitating the control of the flow of information... Photochemical images will continue to be made, but the change in the regime of ‘believability’ will eventually leech all the resistance that reality offers to ‘manipulation’ from even those images”(20).

³⁶ Ibid.

³⁷ Opinion of Donald W. Molloy, Unites States Court of Appeals for the Ninth Circuit, on *The Free Speech Coalition, Plaintiffs-Appellants, v. Janet Reno, Attorney General, United States Department of Justice, Defendants-Appellees* (Argued March 10, 1998, Filed December 17, 1999).

³⁸ This notion of a counterfeit realism—a criminal aesthetic—is quite interesting in terms of what it suggests about the State’s understanding of “reality,” the relationship between image and reality, and its own desired role and rights in the process of image/reality production. Quite predictably, the argument that “reality” can be counterfeit reiterates a commitment to an objective, stable conception of “the real.” Reality, according to this logic, has the existential status of an object; like a dollar bill, this “reality” can be copied or forged and, importantly, be regulated by the State.

