

Case 2: CGI Child Porn

Second Life is an online community where members interact with each other through their avatars—they can explore, chat, shop, and have sex. Cybersex is a popular activity in Second Life because members can design their avatars to cater to their particular, even peculiar, sexual desires.¹ And generally no one minds. But in recent years, one form of online sexual role-playing—called “age play”—has drawn attention. Age play involves adult users who create child-like avatars and use them to engage in virtual sex, sometimes with other child-like avatars and sometimes with adult-like avatars.² This phenomenon is quite troubling, and some countries have taken steps to criminalize the creation, distribution, and possession of these types of images.³ In the United States, however, these images are not illegal.

In the United States, virtual sexualized depictions of children are not illegal as long as no actual children are involved. These images, referred to as “virtual child pornography,” must be distinguished from “morphed” images or “pseudo-photographs,” which are digital manipulations of photographs of actual children. These morphed images are illegal because they include actual children as a part of the sexualized image.⁴ And even entirely virtual images are illegal if they are considered obscene.⁵ The United States Supreme Court has drawn the distinction between virtual and actual (even morphed) sexualized images of children because children are not directly harmed by the virtual images.⁶ On the other hand, some argue that the morphed images are more like the virtual images because they are not the product of sexual abuse, as other child pornography necessarily is. Either way, as technology continues to develop, it may become increasingly difficult to distinguish between images that incorporate photographs of real children and images that are entirely virtual.

Many other countries have addressed this problem by criminalizing computer-generated, sexualized images of children. This approach resolves the issue of distinguishing between virtual and actual images, focusing instead on the possibility that these images—whether virtual or real—are detrimental to children.⁷ But this approach has also been said to punish “thought crime,” which may be problematic even where the thoughts being regulated are extremely and almost universally offensive.

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¹ Joe Stein, “My So-Called Second Life,” *TIME*, Dec. 16, 2006, <http://www.time.com/time/magazine/article/0,9171,1570708,00.html>.

² Daniel Terdiman, “Phony Kids, Virtual Sex,” *CNET News*, Apr. 12, 2006, http://news.cnet.com/Phony-kids,-virtual-sex/2100-1043_3-6060132.html.

³ Marie Eneman, Alisdair Gillespie, and Bernd Carsten Stahl, “Criminalising Fantasies: The Regulation of Virtual Child Pornography,” *The 17th European Conference on Information Systems*, 2009, <http://www.ecis2009.it/papers/ecis2009-0536.pdf>.

⁴ James Nash, “‘Virtual’ child porn is legal, high court says,” *The Columbus Dispatch*, July 26, 2007, http://www.dispatch.com/live/content/local_news/stories/2007/07/26/CHILDPORN.ART_ART_07-26-07_A1_SF7CML1.html.

⁵ Benjamin Duranske, “New Supreme Court Opinion Discusses Virtual Pornography Law; Linden Lab’s 2007 Ban Clarified,” *Virtually Blind*, May 23, 2008, <http://virtuallyblind.com/2008/05/23/ageplay-ban-clarified/>.

⁶ Linda Greenhouse, “‘Virtual’ Child Pornography Ban Overturned,” *The New York Times*, Apr. 17, 2002, http://www.nytimes.com/2002/04/17/us/virtual-child-pornography-ban-overturned.html?ref=child_pornography

⁷ Debra D. Burke, “Thinking Outside the Box: Child Pornography, Obscenity, and the Constitution,” *Virginia Journal of Law and Technology*, Fall 2003, http://www.vjolt.net/vol8/issue3/v8i3_a11-Burke.pdf.