



Fantasy outlets:

Legal, ethical, and social issues

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About Prostasia

- Formed in 2018 as a response to FOSTA
- Holistic, multidisciplinary and multistakeholder
- Has zero tolerance for child sexual abuse
- But we don't believe it's necessary to abandon our core values to protect children
- Demands child protection measures be fair, effective, and human rights compliant
- Has a positive agenda for child protection



Outline

- Legal issues
 - What are fantasy and fictional sexual outlets?
 - Are they legal?
- Ethical and social issues
 - What policy justifications are offered for bans?
 - How do we avoid the harms of over-censorship?
- Working towards some answers
 - Prostasia's research on fantasy outlets
 - How you can get involved



Introduction

- Legal treatment of fantasy outlets is based on indirect harms and moral considerations
- These harms are not well researched
- Laws to criminalize the use of fantasy outlets are a proxy for the criminalization of pedophilia as a sexuality
- Fantasy outlets may actually reduce real world abuse—also not well researched
- Criminalization should be limited to child sexual abuse materials of real minors



Definitions

- Child pornography
 - In the US, real <18 minors being sexually abused or in sexually explicit poses
 - In other countries also includes outlets
- CSAM/CSEM
 - Modern terminology to distance it from adult pornography, may include outlets
- INTERPOL “baseline” definition
 - “Worst of the worst” material explicitly depicting real prepubescent children



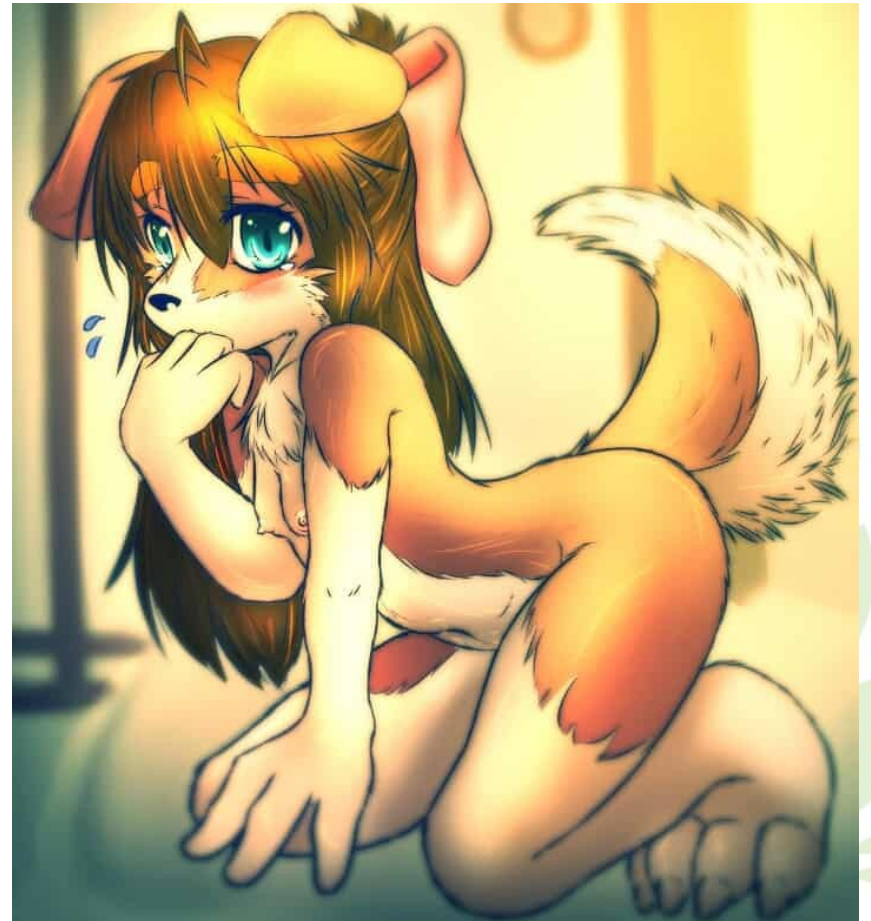
What are fantasy outlets?

- Any representation of nudity or sexuality of a child or in childhood, including:
 - Art
 - Cosplay
 - Dolls
 - Biography
 - Fan fiction
 - Film and TV
 - Role play
- Outlet can be for creator and/or consumer



Lolicon, shotacon, & furry fandom

- Cartoons representing underage characters
- Can be used in online role play and fiction
- Lawful in the United States unless obscene
- Recently banned on Reddit, Discord, Gab



Fictional Minors in Mainstream Media & Fan Content

How you are most comfortable engaging with fiction?

Actual Minor 100% Reality

Where does it fall?

In the US, child pornography (CP) law protects actors too. Nude or simulated sexual scenes with actual minors can sometimes fall under an "artistic merit" exception to obscenity law.

Kayfabe, celebrity image & persona (unfiction)

Where does it fall?

Whether an actor is portraying themselves or a character, it's the actor's real age that determines whether sexual images of them are legal and broadly considered ethical by fans.

Fictional minor character portrayed by actual minor actor

Where does it fall?

Many fans draw a line at explicit fanart of a character that is recognizable as the minor who depicts them on screen.

18+ Cosplay, roleplay & fansonas of a fictional minor

Where does it fall?

In the US, adults who act as minors in lewd cosplay (such as "sexy Alice in Wonderland") are not breaking CP law, though websites, venues and fan communities may have their own policies.

Fictional minor portrayed using a photorealistic render

Where does it fall?

Photorealistic renders of minors could be classed as CP if sexually explicit. Fans also generally don't consider it OK to base explicit artwork on real minors.

Fictional Minor
100% Fiction

Where does it fall?

Fiction and non-photorealistic art cannot be CP in the US, but there are cases where they have been prosecuted as obscenity. Fans are divided on whether explicit art of fictional minors is OK.

R

Noah Schnapp

Actual minor (15) who works as an actor.

Actor in Hollywood known for his role as Will Byers in Netflix's "Stranger Things".

Publicity photos of celebrities who are minors sometimes appear to be sexualizing their subjects.

Hulk Hogan & Rick Ross (Kayfabe & Celebrity Persona)

Actual adult who portrays a fictional adult character full-time and "never breaks kayfabe".

Terry Eugene Bollea (Hulk Hogan) and William Leonard Roberts II (Rick Ross), are media personalities. Hulk Hogan picks high-profile fights and Rick Ross raps about life as an illegal drug dealer.

Coraline

Actual minor actress who was voice cast to portray a fictional minor character.

Coraline is a fictional minor voiced by actress Dakota Fanning who was 15 during the animated film's production.

Roleplay

Individual (actual minor or adult) who acts in the role of a fictional character.

Dungeons & Dragons (D&D) is often one's introduction to live action role play (LARP). Individuals create character sheets and improvisationally act out adventures known as campaigns.

The Sims

Actual minor or adult videogame player who creates fictional minor or adult characters.

"The Sims" is a life simulation game that gives players the power to create and control simulated people.

Michael Cera Morty Smith

Fictional minor character (14) imagined in the likeness of an actual minor actor (15).

Michael Cera, 15 during the production of "Arrested Development", is often cited by fans as a hypothetical live-action casting option for fictional character Morty Smith from the popular Adult Swim cartoon "Rick and Morty".



BTS (Public Persona)

Actual minors who embody the celebrity image (personas) of fictional minors. BTS signed contracts with BigHit Entertainment at ages 15 (RM), 17 (Suga), 16 (J-Hope), 13 (Jungkook), 15 (V), and 16 (Jimin).

The Bangtan Boys (BTS) are a highly publicized K-pop band with global reach who embody their public personas full-time.

BTS Fans are known to create real person fiction (RPF) of their personas utilizing public information.

Harry Potter Trio

Fictional minor characters from the book series (ages 11) portrayed by actual minor actors (11-12 at time of casting; now 30-31).

The Golden Trio is a popular name for the three main characters of the massively popular "Harry Potter" series. Originally marketed to a middle-grade target audience, "Harry Potter" is often cited by fans as their threshold fandom.

Stranger Things

Fictional minor characters portrayed by actual minor actors.

Unlike "Harry Potter" or "IT", where the book existed prior to the movie, "Stranger Things" exists solely in film media.

Fursonas (Furry Persona)

Individual (actual minor or adult) who creates a fursona or an original furry character (OC).

The concept of sonas began in the furry fandom. Furies are known to create fursuits for their fursonas. In addition to original art and fiction, furies will utilize their fursona to participate in fandom roleplay, cosplay and more.

Cosplay

Actual minor or adult individual acting as a fictional minor or adult character.

Individual who acts within the role of a fictional (minor or adult) character.

Cuphead "Cupsonas"

Fan (actual minor or adult) who creates a fandom sona (cupsona) or original character (OC).

Cupsonas are a popular way for fans to create fictional self-insert characters that exist in the same universe as the 2017 video game "Cuphead". The main characters of Cuphead are fictional minors and many cupsonas follow this design.

Self-Insert

Individual (actual minor or adult) who creates fictional content using a self-insert character.

Self-insert is a fictional representation of an individual which tries to accurately reflect the individual's in real life (IRL) character. Also known as Y/N and /Reader (slash reader) fiction.

Ellie (The Last of Us)

Fictional minor character (15) whose voice was cast by an actual adult (36).

Unlike animation, Ellie is a fictional minor who has been rendered using photo-realistic graphics (CG animation).

In 2013, actress Ellen Page claimed that NaughtyDog studios had modeled the character using her likeness.

Lolicon & Shoutacon

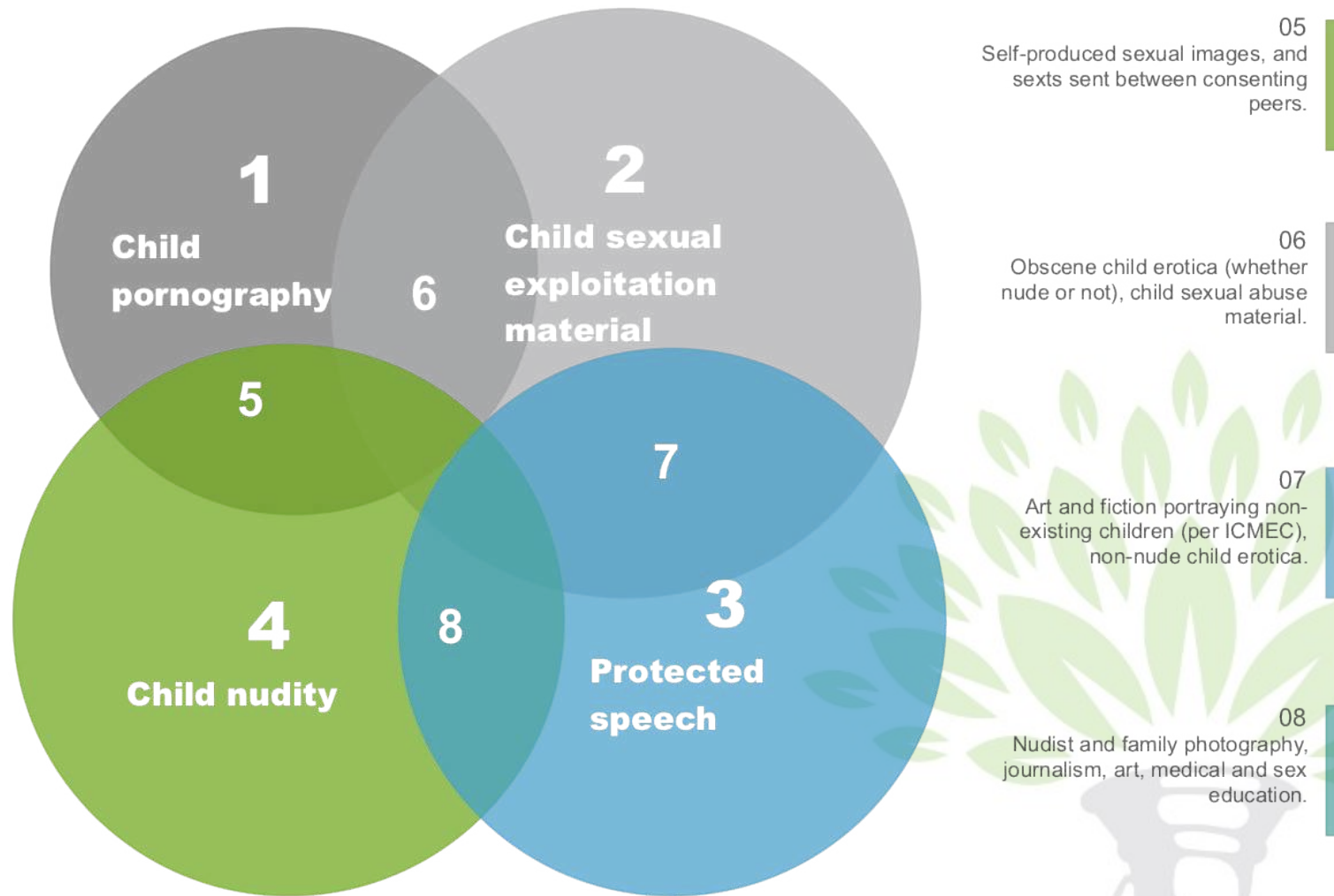
Actual adult voice actor who is cast in the role of a pubescent or pre-pubescent fictional minor character.

The lolicon (loli) & shoutacon (sho) may refer to either the genres (Black Butler) or the characters (Kanna Kamui from "Miss Kobayashi's Dragon Maid") these characters are often depicted as pubescent or pubescent fictional minors who are often in sexually suggestive or explicit scenes.

Real world survivor stories



Fantasy outlets and the law



How law regulates art and fantasy

- Canada (2020-21)
 - Mainstream novelist acquitted of CP offense
 - Supreme Court refused to hear Quebec's appeal
- United States (2021)
 - Host of fiction website convicted of obscenity
 - Appeal to be lodged
- Australia (2020)
 - Sex doll buyers jailed



How law regulates sex dolls

- Complete ban on sex toys
 - Alabama, Texas (dead letter), India, Malaysia
- Specific ban on “childlike” dolls
 - Florida, Kentucky, Korea (soon), South Australia
- Child pornography law encompasses dolls
 - Canada, Norway
- Prohibition on importing obscene articles
 - Australia, New Zealand, United Kingdom



CREEPER Act/JUSTICE Act

- CREEPER introduced in 115th Congress
 - Bans importation or transportation of a “child sex doll,” defined as an “anatomically-correct doll, mannequin, or robot, with the features of, or with features that resemble those of, a minor, intended for use in sexual acts.”
 - Unsourced findings that the dolls “lead to rape”
 - Passed the House, did not reach the Senate
- JUSTICE and CREEPER in the 116th Congress
 - Pending before the House Judiciary Committee



A movement to ban “virtual CP”

- The UN CRC adopted this text in 2019:
 - The Committee encourages States parties to include in their legal provisions regarding child sexual abuse material (child pornography) representations of non-existing children or of persons appearing to be children...
- A single child protection nonprofit ECPAT has been pushing for this for a decade
- Over 12,000 people signed a petition against this change



Policy justifications for CP bans

- Protecting children from direct harm
 - Criminalization is justified due to direct harm victims suffer (*New York v Ferber*)
 - Criminalization of “virtual CP” cannot be justified on this basis (*Ashcroft v FSC*)
- Protecting children from indirect harm
 - Canada and the UK ban “virtual” images for indirect harms of sexualizing minors
- Enforcement of morality
 - “It’s gross,” “It’s evil”, “I don’t like it”



Outlet bans are bad public policy

- Criminalization of private sexual behavior is a dangerous incursion on sexual freedom
- It misrepresents the (lack of) evidence into outlets and offending and impedes research
- It diverts enforcement resources away from the prevention of the abuse of real children
- It others a misunderstood, stigmatized group and de-facto criminalizes their sexuality



Tech company content policies



- Platforms may adopt stricter than legal standards
- Reddit bans sexual or suggestive content involving minors:
 - “including fantasy content (e.g. stories, “loli”/anime cartoons), that depicts encourages or promotes pedophilia”



BEST PRACTICE
PRINCIPLES FOR

**SEXUAL CONTENT
MODERATION AND
CHILD PROTECTION**

VERSION 1.0 — NOVEMBER 2019

- Prevention of harm
- Evaluation of impact
- Transparency
- Proportionality
- Context
- Non-discrimination
 - Human decision
 - Notice
 - Remedy

Prevention of harm

Sexual content should be restricted where it causes direct harm to a child. Indirect harms should not be the basis for blanket content restriction policies unless those harms are substantiated by evidence, and adequate measures are taken to avoid human rights infringements.



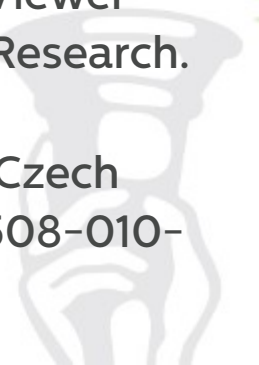
Outlets and harms: what we know

- Indulgence in sexual fantasies about children is not significantly related to MAP offending¹
- Access to “virtual child pornography” is not associated with attitudes that sex between adults and real children is acceptable²
- Availability of virtual CP outlets may even reduce rates of sexual offending against children³

1. Bailey JM, Bernhard PA, Hsu KJ. An Internet study of men sexually attracted to children: Correlates of sexual offending against children. *J Abnorm Psychol.* 2016 Oct;125(7):989–1000. doi: 10.1037/abn0000213. PMID: 27732028.

2. Paul B, Linz DG. The Effects of Exposure to Virtual Child Pornography on Viewer Cognitions and Attitudes Toward Deviant Sexual Behavior. *Communication Research.* 2008;35(1):3–38. doi:10.1177/0093650207309359

3. Diamond, M., Jozifkova, E. & Weiss, P. Pornography and Sex Crimes in the Czech Republic. *Arch Sex Behav* 40, 1037–1043 (2011). <https://doi.org/10.1007/s10508-010-9696-y>



Our research

- First year pilot study aims:
 - How do MAPs use outlets?
 - Identify correlates of use as possible risk or protective factors for offending.
- Led by Dr Gilian Tenbergen from SUNY Oswego
- Collaborators: Craig Harper and Rebecca Lievesley from Nottingham Trent Uni



Coming next...

- A multi-year, multi-arm clinical project
- Plans to expand to include clinicians in Germany during year 2 and beyond
- ATSA 2021 poster session October 2021
 - The Use Of Fantasy And Fictional Sexual Outlets And Offending Behavior Among MAPs: What Do We Need To Know?
- You can be part of this important work by joining as a member or volunteering!



Conclusions

- Research into the effects of outlets is overdue, underfunded, and stigmatized
- Initial evidence suggests fantasy outlets do not lead to real abuse on a population level
- Individual outcomes may vary
- Criminalization of fantasy outlets is not ethically or legally justified
- Join Prostasia to help support our research





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