

## Assessing Parental Risk in Parenting Plan (Child Custody) Cases Involving Internet Sexual Behavior

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**Abstract:** One type of claim in parenting assessment (child custody)<sup>1</sup> cases is that one parent, typically the father, is alleged to be engaging in improper or compulsive sexual behavior via the Internet. The sexual behavior at issue can range from frequent sexually explicit chats with other adults to compulsive viewing of adult pornography. In more extreme cases, the problematic behavior may involve viewing child pornography, and in some cases, the parent faces actual criminal charges in this regard. The present article reviews the current scientific knowledge base for evaluation of risk in such parenting evaluation cases and provides some guidelines and recommendations for an evaluator in the assessment process.

**Keywords:** child custody, Internet, child pornography, parenting assessment

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### Introduction

In contested parenting matters, such as child custody and access cases, allegations of parental unfitness or wrongdoing, including sexual abuse or exposure to sexually inappropriate parental behavior, are sometimes leveled by one parent against the other (Johnston, Lee, Olesen, & Walters, 2005; Thoennes & Tjaden, 1990). If the allegations are established to be true, a parenting evaluator may be asked by the legal decision maker to determine if the problematic behavior negatively affects parenting capacity or safety of the child in question (Behnke and Connell, 2005; Kuehnle & Connell, 2009; Otto, Buffington-Vollum, & Edens, 2002). Recommendations may also be sought for

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<sup>1</sup> The term “parenting-plan evaluation” or “parenting evaluation” is used instead of “custody evaluation” to reflect the current focus, in all states, on legal decision-making in contested parenting cases that seeks to maximize the capacities of each parent to contribute positively to meeting the child’s needs. “Custody” and “visitation” may have come to imply a “winner take all” notion that is no longer an accurate reflection of the understanding of what is in children’s best interests.

intervention and some method for ongoing assessment of risk for future acts of child maltreatment or wrongdoing (Bow & Quinnell, 2004; Galatzer-Levy & Kraus, 2009; Kuehnle & Connell, 2009; Rohrbaugh, 2008; Woody, 2000). Further, there may be a call for recommendations for a course of action if the allegations are unsubstantiated or are determined to have been made maliciously (Kuehnle & Connell, 2009).

Some parenting evaluators may not have the necessary training and experience to assess every kind of unfitness or wrongdoing and, when they lack adequate training, may refer the litigant to a specialist who can conduct that part of the overall evaluation (Association of Family and Conciliation Courts [AFCC] Task Force for Model Standards of Practice for Child Custody Evaluation, 2006; Rohrbaugh, 2008). Similarly, some evaluators who have specialized training and experience in risk assessment may not have experience conducting full parenting-plan evaluations and fitting the risk-assessment data into a broad assessment of parenting. A team approach may make sense in those cases and this collaboration may ensure that contextual information is taken into account. The effectiveness of a team approach has not been explored empirically but common sense supports reliance on specialists to examine aspects of a family situation for which one lacks expertise. It is also a common approach in other areas of psychology, in correctional work or mental-health assessments (e.g. English, Pullen, & Jones, 1996).

Although the Internet provides opportunities for a range of inappropriate or criminal behaviors, for example fraud, illegal downloading of music or videos, this paper focuses only on the role of online-sex activities. In contested custody cases, claims of the other's sexual wrongdoing can take various forms and may also include these Internet-related activities. Two common themes of such claims are either sexual self-control issues such that the children could be placed at risk from inattention or, more seriously, a pedophilic sexual interest pattern that would theoretically place the children at direct risk of sexual abuse.

Following the pattern described above, one form the self-control issues might take is that the parent is so preoccupied with Internet sexual behavior—such as downloading and viewing legal pornography or engaging in sexually explicit chats with other adults—that the parent might place the children at risk through outright neglect or at least through inattention. In these cases, there may be no allegation that the parent will molest the children, but rather that the parent's sexual Internet preoccupation may allow harm to come to the children. This allegation is indistinguishable from any allegation of parental preoccupation with some activity to the point that the parent is neglectful. Of course, the evaluator may gather information through interviews to explore whether the child is being exposed, directly or indirectly. For example, harm could come to the children should they detect such pornographic materials when using the computer, e.g., browsing through the history file or viewing downloaded and stored pornographic images. Ordinary techniques of parenting evaluation, including interview and collateral document review, remain the tools through which the evaluator can assist the fact finder under these circumstances.

When the established wrongdoing centers on viewing child pornography online, with no established direct victim contact, the assessment takes on a particularly delicate nature. It is this topic that will be the primary focus of this paper. The act of viewing child pornography, a crime in most jurisdictions, may be viewed within a contested custody context as any other criminal behavior, such as, for example, embezzlement or drug dealing. The focus for the family court is whether or how the criminal activity may affect the child, directly or as a result of impairing the parent's capacity to meet the child's needs. However, criminal activity alone—even viewing child pornography—does not necessarily imply parental unfitness. With child pornography, however, there are additional concerns, beyond those associated with non-sexual crimes. First, the fact finder may consider a criminal act of viewing child pornography to automatically render an individual unfit to parent any child. This is a legal or moral determination beyond the evaluator's purview. Second is the theoretical concern that pedophilic fantasies lead to pedophilic actions, which could place the child in question at risk of sexual abuse. However, at least with regard to use of child pornography, no such link has been empirically established, and the evaluator, to be of assistance to the fact finder, may report in a balanced and thoughtful way, what can be derived from the empirical literature to assist in that determination. This will be explored in detail in this paper.

As we noted above, to a certain extent, the evaluator gathers data that may assist the trier of fact in determining whether the allegations appear to be true. However, the evaluator does not make this determination himself or herself for a number of reasons. Determining whether an event occurred is outside the realm of expertise of mental-health professionals. The evaluator may not (in fact, usually does not) have access to the broad range of information that the court would, and does not have the opportunity to observe witnesses, including expert witnesses in allied professions, undergo cross examination. Consequently, although the evaluator can raise issues for the court to consider, the evaluator should be careful not to presume to state as fact any contested issue, and opinions and recommendations should be offered in conditional form (Grisso, 2003; Heilbrun, 2001; Melton, Petrila, Slobogin, & Poythress, 2007; Tippins & Wittman, 2005). That is, the evaluator can review the contradictory or contested evidence and indicate what the conclusion would be depending on what factual assumptions are made (see Witt & Conroy, 2009, pp. 129-132 for a more extended discussion). The court is thereby assisted in reaching a conclusion on the facts.

At the outset, we acknowledge a dearth of research regarding how, if at all, Internet-related sexual behavior affects one's ability to parent. We know of not a single study that has evaluated this effect. Consequently, the forensic evaluator has two choices: decline to perform risk assessments in such cases, or perform risk assessments applying what information is available from related research, fully acknowledging the limitations of the data. Either of these options would conform to the American Psychological Association code of ethics [see APA, 2009, Section 9.02 (b)], which indicates that, if an assessment method has not been validated on the population being assessed, the evaluator should "describe the strengths and limitations of the test results and interpretations." This admonition suggests that evaluators should be cautious in

this circumstance, but it does not prohibit an evaluation. This article provides guidance for evaluators who choose to perform the evaluation despite the limitations in empirical research.

### **Theme 1: Preoccupation with Internet sexual activities**

See Appendix 1 for the case of John Viewer, who was alleged to have neglected his children due to his preoccupation with *legal* sexual online activities. A further consideration is whether the child might be at risk of viewing age-inappropriate material, e.g. when browsing through his father's search history.

Davis (2001) distinguishes *general* Pathological Internet Use (PIU), which may include more general, multidimensional overuse of the Internet, from *specific* PIU, which may involve problematic overuse of the Internet for a specific purpose, such as gambling, gaming, or online sex. Davis suggests that specific PIU is generally the result of an antecedent psychopathology that becomes linked with the Internet use, providing a new forum for existing problematic or deviant behavior. Researchers have now developed a set of descriptors that might indicate so-called *Internet Addiction*; key criteria are: use of the Internet to modulate negative moods or to escape reality; preoccupation with the Internet; increasing use of the Internet; symptoms of tolerance and withdrawal; denial of Internet usage; serious disturbances in offline activities; and unsuccessful attempts to cut down Internet exposure (Davis, 2001; Griffiths, 2000; Orzack, Voluse, Wolf, & Hennen, 2006; Kandell, 1998; Morahan-Martin, 2005; Young, 2007). Although we do not endorse the use of the term "Internet Addiction," many of the above criteria—focusing on loss of control and functional impairment—parallel those of traditional addiction diagnoses. However, many researchers question the value of current research to identify a group of Internet addicts distinct from non-pathological users, one of the requirements for inclusion into the Diagnostic and Statistical Manual of Clinical Disorders (Griffiths, 1998, 2000; Warden, Philips & Ogloff, 2004). Currently, Internet Addiction is regarded as a specific form of already existing disorders such as impulse control disorder (ICD-NOS) (Shapira, Goldsmith, Keck, Khoshla, & McElroy, 2000; Treuer, Fábán, & Füredi, 2001).

The parenting evaluator's focus is similar, when considering alleged Internet addiction, to that used for other alleged addictive or compulsive actions. Still to be established is how the compulsive behavior affects parental capability, and whether the child is placed at risk either due to the behavior itself or its consequences. Another factor to consider is the parent's willingness to change these behaviors or to participate in therapeutic intervention.

In summary, for these cases in which the Internet use does not involve illegal material, we recommend conducting an assessment that relies on generally recognized methods for comprehensive parenting assessment and that embraces additional data gathering, through interviews, review of parents' self-report questionnaires, and review of collateral information to address the following considerations:

- Is there a documented history of emotionally or physically neglecting the children due to preoccupation with sexual matters?
- Has the parent invested so much time, effort, and emotional energy into Internet-related sexual relations that the parent's relationship with the children is or has been impaired, although perhaps not extreme enough to be considered neglect or abuse?
- Has the parent exposed the children to non-sexual high-risk situations through inattention?
- Has the parent exposed the children to sexual material, either on the computer or by witnessing the parent's activity with sexual partners?
- Has the parent placed the children in unsafe situations through exposure to the parent's inadequately vetted sexual partners?
- What security precautions has the parent taken to prevent exposure of the child to sexual materials?
- What changes have happened or is the parent willing to make, regarding his own behavior as well as safety of his child?

In the present hypothetical case of John Viewer, there is no history of neglect by the father and no exposure of the children to any inappropriate material or high-risk situations. Therefore, we would consider the father's Internet sexual behavior (and the actual consenting adult sexual behavior that followed) to be irrelevant to the issues of parenting time and responsibility. (Whether the court might consider such sexual behavior to be morally relevant is beyond the scope of a mental-health evaluation.) Given that the Internet pornography did not include children, no concerns regarding child sexual abuse are raised. It might be recommended to John Viewer to set up safety precautions, such as a password-protected Internet usage.

### **Theme 2: Viewing of online child pornography**

See Appendix 2 for the case of John Jackson who is currently facing criminal charges due to presence of child-pornography images among pictures of legal adult pornography.

As described above, this case raises two separate issues: the criminal aspect of viewing child pornography as well as the potential risk for the child in question (and other children) resulting from assumed pedophile fantasies. In addition, the child can be at risk of inattention as a result of the parent's spending time online to search for, trade, and masturbate to the child pornographic images (see above).

Child-pornography offending is not a new type of sex offending, but one that has increased exponentially with the advent of the Internet and ready availability of child pornography. Webb, Craissati, and Keen (2007) describe a “new wave of arrests, charges, and convictions” (p. 449) of Internet sex offenders (ISO) that followed the introduction of the Internet. In some countries such as New Zealand, court and correctional services still deal with the Internet sex offender (ISO) category in a “make-fit” manner by using and adjusting conventional assessment and treatment methods. However, it is theoretically possible that the child-pornography offender may not fit the conventional profile of a child molester and may, for example, display few of the static risk factors known to be associated with recidivism among predatory child molesters.

In general, child pornography can be used in two different ways. First, it can be the sole focus of the criminal activity where the offender engages in viewing, collecting, distributing and trading of the objectionable material with no intention to progress to contact abuse. Second, child pornography can be used before, during, or after a contact sexual abuse event occurs, for example as a tool to desensitize the victim in the form of images taken during sexual contact with an under-age victim. Briggs, Simon, and Simonson (2009) refer to the first type as “fantasy-driven” and the second offender type as “contact-driven.” Whereas for fantasy-driven offenders, satisfaction and exploration of their fantasies is the main motive for their offensive online behaviors, contact-driven offenders use the abusive images mainly as a tool to arrange real-life sexual abuse, or as fuel for fantasies that are consistent with contact offending behavior. This would suggest at least two possibly meaningfully distinct types of child-pornography offenders, with the contact-driven group presumably being more similar to conventional contact child molesters. There could be other or mixed types, of course; research may in time provide a clearer picture of these distinctions.

Overall, ISOs have been found to share some similarities with contact sexual offenders, but they differ in a few areas that might be critical for risk assessment. A review of published material on ISOs found that they are usually Caucasian and younger than contact sex offenders (Meridian, Wilson, & Boer, 2009). ISOs, relative to contact sex offenders, have higher education and employment status (for example, see Burke, Sowerbutts, Blundell, & Sherry, 2002; Howitt & Sheldon, 2007; Endrass, et al., 2009), and score higher on fantasizing (Sheldon & Howitt, 2007; Taylor & Quayle, 2003) and impression management (as measured on the Balanced Inventory of Desirable Responding, Bates & Metcalf, 2007; Millon Clinical Multi-axial Inventory, Webb, Craissati, & Keen, 2007; and standardized measures of the UK National Probation services, Middleton, Beech, & Mandelville-Norden, 2004). Therefore, ISOs may be expected to have both higher IQs and higher literacy skills than contact child molesters. In terms of cognitive distortions, online offenders are more likely to report sexual objectification of children and less likely to conform to conventional pathways to sex offending (e.g., Ward & Siegert, 2002).

Even though these outcomes suggest some differences between Internet and contact child sexual abuse offenders, these characteristics are only descriptive and need to be confirmed by future research. With the current knowledge base, it seems reasonable to

assume—as described above—that Internet sex offending is conducted by both, a “new” type of (fantasy-driven) offender and by contact sex offenders who also use the Internet to view child pornography and to distribute pictures of their sexual abuse during or after the abuse incident. In their study on Internet-initiated sex crimes with minors, Mitchell, Finkelhor, and Wolak (2005) reported that 15% of their sample exposed their victim to child pornography and 21% took pictures of their own sexual acts with the victim. In a specific sub-sample of 77 cases in which no physical violence was used between the perpetrator and victim, Walsh and Wolak (2005) found that 45% of contact sex offenders possessed child pornography, 39% exposed their victims to adult or child pornography, and 27% produced child pornography. Conversely, a recent review by Seto (2008) found that, in the six studies he reviewed, between 7% and 40% of the child-pornography offenders had a history of contact sex offenses with children. He also noted that the National Juvenile Online Victimization Study by Wolak and associates (discussed in Seto, 2008, p. 59), which studied over 400 child-pornography offenders, found that 11% had prior contact sex offenses.

It would be erroneous, of course, to conclude that, because contact sex offenders are significantly more likely than nonoffenders to possess child pornography, they (or anyone who possesses child pornography but has no known history of contact sex offenses) would necessarily progress to contact sex offenses. Eke and Seto (2008) reported that, in two studies of over 500 child-pornography offenders who had no prior contact sex offenses, fewer than 10% had a known contact sex offense within roughly the next four years. However, the best predictor of future contact offenses among Eke and Seto’s population was, not surprisingly, a prior history of contact sex offenses.

Similarly, Endrass et al. (2009) studied 231 men with child-pornography convictions and found that over a six-year follow-up, 2.6% had a conviction for use of illegal pornography and none had a conviction for a hands-on sex offense; applying a broader definition of recidivism (including investigations and charges), they found that 3.9% recidivated with regard to illegal pornography and 0.8% with regard to a hands-on child sex offense—percentages that do not suggest a causal link between child-pornography possession and contact offending.

There are differences between official and reported rates of contact sexual offenses that further complicate this topic. Bourke and Hernandez (2009) examined the reported rate of prior hands-on sexual offenses in a sample of 155 treated child-pornography offenders. Although self-reported rates of contact offending increased from 26% pre-treatment to 85% post-treatment, many offenders reported their offenses had taken place before consuming online child pornography. However, the reader should be aware that this study is controversial. One court, for example, raised concerns about the potentially coercive nature of the treatment program on incarcerated sex offenders and even on whether its sample of incarcerated offenders adequately represents the broader population of Internet child-pornography viewers, finding the work that led to the

study to not be credible (U.S. v. Johnson, 2008).<sup>2</sup> In fact, some of the offenders in the treatment program were involved with Internet offenses other than just possession of child pornography, e.g., traveling to meet a minor or ostensible minor who was contacted over the Internet (Hernandez, 2006). In a sense, this distinction highlights the fact that high sensitivity (that is, membership in a population being associated with a characteristic) does not always translate into high positive predictive power (that is, possession of a characteristic predicting membership in a population).

Still, it would make sense that the ISOs who progressed to contact offending would differ in their “risk profile” from ISOs who committed contact offenses prior to accessing child pornography, and that, further, both groups would differ again from those ISOs who did both contact offending and child-pornography offending concurrently. Further, Sheldon and Howitt (2007) used a qualitative approach to ascertain why child-pornography offenders in their sample did not progress to contact sex offenses. They found that 56% of their subjects felt that fantasy alone was more rewarding to them. It appears that the role of fantasy may play a crucial part in the distinction between the different offender risk groups (i.e., those who progressed to contact offenses versus those who did not).

There is considerable variability in the findings that may be better understood as research methodology undergoes further refinement to control for sampling problems, differences in definitions, and other such factors. However, it currently seems reasonable to assume different subgroups of child-pornography offenders present varying risk to commit contact abuse. The diversity among ISOs and the lack of research make it difficult for an evaluator to recognize and assess specific risk factors for a particular individual. None of the currently used risk measures for sexual, violent, or general criminal recidivism is standardized on Internet sex offenders; hence, use of such instruments has no scientific basis. In addition, the impression-management efforts of child-custody litigants in general complicate assessment. All data must be interpreted with consideration for the examinee’s efforts to present in the best possible light.

### ***Assessment of ISOs with a contact-driven profile***

In this paper, a contact-driven profile refers to a history or a current conviction for sexual abuse of a minor in combination with a conviction for possession of child pornography. Depending on jurisdictional definitions, this term is sometimes used to include use of the Internet to arrange a meeting with a minor for a sexual encounter, even if the effort is unsuccessful.

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<sup>2</sup> The court stated (p. 15): “The Government argues that Defendant is dangerous because the Study indicates other individuals charged with similar crimes have committed ‘hands-on’ sexual abuse of children. The Court rejects this proposition because the Butner Study is not credible.” (internal footnote omitted) (U.S. v. Johnson, 2008)



Many instruments have been designed to assess the reoffending risk of sex offenders. These instruments are based on common factors extracted from sex offenders' historic presentation, and are repeatedly validated on offender samples (for similarity) and non-offenders (for comparison). They usually allow for classification of the individual into one of three categories: low, medium, and high risk to reoffend.

These measures are of two main types: actuarial (statistically-based) tests and structured professional judgment (SPJ) instruments. The most commonly used example of the former sort is the Static-99 (Hanson & Thornton, 1999; Harris, Hanson, Phenix, & Thornton, 2003) or its recent revision, the Static-99R (Helmus, Babchishin, Hanson, & Thornton, 2010). The Static-99 is comprised of ten descriptive items (e.g., age of offender at the time of the assessment, number of prior charges or convictions, ever having had a male victim, any convictions for non-contact sexual offenses, ever lived with a lover for two years), the combination of which has been shown to have reasonable predictive validity for identifying those sexual offenders likely to commit another sex offense (e.g., Hanson & Morton-Bourgon, 2004). In a meta-analysis, Hanson and Morton-Bourgon (2004, 2007) indicated that the average predictive accuracy of the Static-99 was in the moderate to large range ( $d=.63$ ). Again, the Static-99 or Static-99R can be used only in cases in which the parent is a convicted sex offender; in addition, there is an explicit caution in the Static-99 manual not to use it on individuals whose only offense involves viewing child pornography.

An example of SPJ is the Sexual Violence Risk-20 (SVR-20; Boer, Hart, Kropp, & Webster, 1997). The SVR-20 is comprised of 20 items, organized in three sections: psychosocial adjustment (11 items), sexual offenses (7 items), and future plans (2 items). The instrument has reasonable predictive validity according to Hanson and Morton-Bourgon's (2004) findings. In their 2004 meta-analysis, Hanson and Morton-Bourgon indicated that the average predictive accuracy of the SVR-20 was also in the moderate to large range ( $d =.77$ ).

The purpose of the assessment is generally the determinant for the choice of instrument. Establishing whether an offender poses a greater risk than his peers for sexual violence can be done economically and quickly with an actuarial tool such as the Static-99. Alternatively, if one wants a more individualized exploration of the dynamics presented by the examinee or wants to manage the risk posed by an offender, the SVR-20 would be a more comprehensive, but less economical and more laborious, option. In contested custody cases where one parent has historic or current convictions for child sexual abuse, a thorough risk assessment may already have been conducted by corrections, probation, or parole authorities before the parenting evaluation. In addition, the client might have received treatment for his sexual misbehavior. The evaluator may find it useful to interview the forensic experts, probation officers, and other professionals who have already been involved with these clients, or to review their files and summarize this data for the fact finder.

Although it may seem to be a justifiable position that an individual with a contact sex offense history should not have parental responsibility for his children, this is not

necessarily a correct reflection of the law or of the state of psychological knowledge. The moral and values questions are of course left to the trier of fact; the evaluator can only be concerned with what behavioral science can illuminate. Consider, for example, a person who was convicted of a contact sex offense with his child, served a prison sentence, and was released with the requirement that he receive treatment. He then remarries and requests some form of shared parenting time and responsibility for the child from his previous marriage. With regard to this child there may be both societal questions regarding the propriety of his having a continued role in parenting the child and there may be psychological issues to explore, including both the risk of reoffending and the general impact of his absence from or renewed presence in the child's life. Or perhaps the second wife has children and their father raises questions about what risk this individual poses to those children. Such fact patterns are not at all far fetched, and the evaluator may be asked to assist the court by gathering relevant and reliable information. For each scenario, considerations may differ substantially—there may be attachment considerations, risk factors, and values considerations that vary depending on the circumstances. A careful analysis of those factors that lend themselves to psychological assessment can be helpful to the fact finder.

### ***Assessment of ISOs with a fantasy-driven profile***

In this paper, a fantasy-driven profile refers to a history or a current conviction for possession, distribution, display, or trading of child pornography with no direct victimization of a child. In any case, this requires some finding of fact—not by the evaluator—that this illegal sexual behavior has occurred. If no such finding of fact has been made, then the best that an evaluator can do is offer conditional conclusions, depending upon what findings of fact are later made.

As stated above, there are three aspects to consider: (1) in general, existence of criminal charges for one parent, (2) presence of possible excessive Internet usage and risk of inattention or unintended exposure to inappropriate material for the child (see discussion for theme 1), and (3) risk of a cross over to contact sex offending, which might place the child (or other children) at physical risk. This section will consider the last aspect and provide some recommendations for assessment.

Our criminal justice system is predicated on the concept that a person is innocent until proven guilty; hence, a person cannot be treated or assessed as a contact child molester without such conviction (unless there is clear acknowledgment by the person of having committed a contact offense). As reviewed above, there is currently no empirical base to suggest a causal link between child pornography and future contact sex offending; that is, the base rate of future contact sex offending is low among individuals whose only offense so far is viewing child pornography over the Internet (Eke & Seto, 2008; Endrass, et al., 2009). None of the currently used structured sex-offender risk-assessment instruments is validated on Internet sex offenders, and measures specific to that population have not yet been developed. The evaluator can educate the court about the limitations of psychological science for such risk assessment and then can provide some potentially useful information to assist the court

in making the parenting time and responsibility determination. The following issues may guide the assessment process:

- (1) Assumptions for custody assessment of an acknowledged user of child pornography:
  - a. This individual has not been convicted of active sexual abuse of a child. This means we cannot use conventional measures of risk assessment for sexual recidivism.
  - b. By viewing child pornography, the parent has passively supported the direct sexual abuse of a child.
- (2) Treatment methods for child-pornography offenders have not been empirically tested such that success rate can be stated.
- (3) Risk of crossing over to contact offending
  - a. If the parent viewed online child pornography for sexual satisfaction, in contrast to purely financial or social benefits of trading and dealing, there is theoretically a greater risk of cross-over to real life abuse. However, as noted previously, research to date indicates that the base rate of such crossover is low.
  - b. The risk for cross-over may be greater if such interest is verbally stated by the client or if his actions, even over the Internet, go beyond merely viewing child pornography (such as sexual chats with minors or attempts to set up real-life meetings with minors). There might also be an increased similarity to characteristics of a contact-driven offender profile. Intent is presumably important.
- (4) Pattern of child-pornography offending. Potential sources of information to assist in describing the individual's Internet related behavior and interests
  - a. Material viewed by the individual to gather a general understanding of interests
  - b. Chat histories and online postings can be screened for presence of paraphilias and cognitive distortions.
  - c. Membership in relevant newsgroups or online interest groups, email content, chat histories and online postings can be used as sources to establish offense-supportive cognitions or thinking errors.
  - d. Social and psychological indicators of deviance and amount of time spent with collection and social and financial costs of collection behavior (see Taylor & Quayle, 2003)

In summary, we recommend exploration and consideration of the following aspects:

- Examinee's understanding of his (passive) role in the sexual abuse of a child used to create the child pornography
- Readiness to stop behavior based on treatment providers' evaluations
- Function of the engagement in child pornography, with a specific focus on sexual satisfaction
- Expression of interest in contact for the sexual abuse of a child; the closer to contact sex offending, the more valuable might be traditional risk formats
- Evidence of cognitive distortions found in offense-related material such as chat histories

Other case-specific factors worth considering when assessing ISOs include:

*Contact with other offenders:* Antisocial or pedophilic peers can validate and normalize criminal behavior. Examination or scrutiny of data from examinee's preferred online locations (e.g., open chat rooms, peer to peer, newsgroups, email) may reveal the amount and intensity of contact.

*Security procedures:* Did the person secure his computer against unwanted access, and what was the intention? Security software may help to disguise online criminal activities but can also be used to protect children in the home from unwanted exposure.

*Underlying motivations:* It is useful to explore underlying motivations for the online-sex activities; a relationship has been found between time spent online generally and mental-health issues (Laulik et al., 2007; Sheldon & Howitt, 2007; Webb et al., 2007). However, evidence of excessive time spent online is not, in itself, a basis for curtailing a person's right to parenting time or responsibility.

*Collaborative approach:* It might be worthwhile to seek professional consultation in technological issues to assist in assessing the extent and content of the subject's online activity. At times, it can be useful to consult with the forensic computer specialist who has analyzed the computer hard drive contents.

Considering Case 2 (see appendix 2), that of John Jackson, it presents a difficult factual question: Are the father's Internet stimuli child pornographic and, if so, did he have actual intent to download them? A forensic psychological evaluator is not a finder of fact, so in a questionable case such as this, it is beyond the evaluator's scope to determine whether the stimuli are child pornography or not. In fact, in many (if not most) cases, the evaluator does not view the actual Internet pornography, but only reads forensic analytic reports regarding what images or videos were found on the individual's computer.

In Case 2, if we were to assume that the Internet pornography was legal, then the focus would be entirely on whether the father's Internet sexual behavior or masturbation history has led to any neglect or abuse of the child, similar to the analysis in Case 1. If we were to assume that the questionable Internet pornography stimuli were indeed illegal, then the analysis becomes more complex. The evaluator would need to consider the number, content, and organization of the pornography collection, given that these factors add an assessment of sexual deviance to the more general risk assessment. In addition, the evaluator should consider whether there is a history of additional illegal sexual behaviors involving physical contact or approach behavior (such as sexually explicit Internet chats with minors or presumed minors). It seems reasonable that the higher the assessed sexual deviance, all else equal, the more concern one would have regarding risk of a contact sex offense. Finally, the evaluator in this case could consider whether the father's viewing of child pornography was intentional, because ten child pornographic images is a very small number, given the enormous quantity available online. Although an assessment of intent considers the individual's self-report, such an assessment relies as well on collateral factors—such as interviewing other family members and reviewing file information—as do all good parenting evaluations.

## **Discussion**

This article does not address what evaluation process or criteria are useful when alleged sexual misbehavior is unproven and denied. As we note above, the best that one might be able to do under those circumstances is to articulate to the court the implications regarding risk that follow, depending on the court's various potential findings of fact.

Second, even if the facts are clear, there are ethical considerations. The empirical literature on ISOs is relatively limited, and the empirical literature on individuals who engage in legal but poorly controlled sexual behavior, Internet related or otherwise, is virtually nonexistent. We propose some guidelines to assist in expert evaluation; however, these guidelines await empirical confirmation and need to be used with appropriate and explicit acknowledgement of the limitations of the science in this kind of risk assessment.

Moreover, the focus in either case should be the impact of the sexual behavior on the children of the marriage. We trust that, prior to this evaluation, if there were a conviction for a sex offense, some legal authority has conducted a thorough risk assessment for this client, and that the client might even have attended or may currently be attending treatment for sexual behavior problems. With those considerations in mind, we have considered two types of fact patterns—those involving actual viewing of Internet child pornography and those involving legal Internet sexual behavior.

There is likely to be considerable disagreement between the litigating parents on the facts in the case. The evaluator can gather information through interviews and collateral contacts to assist the fact finder, the judge or jury, in this determination. The

evaluator should not assume the responsibility for determining such facts since that is the province of the court, but should gather relevant information and report it to assist the court in its findings or conclusions regarding the underlying facts. (The family court may make a determination on whether or not an event is more likely than not to have occurred, for the purpose of deciding whether a parent represents a risk to a child; this of course is different from a criminal court making a determination that a criminal act has occurred). In some cases, the evaluator may need to issue conditional conclusions—that is, offer the court a range of risk opinions and recommendations, depending upon what findings the court makes on the underlying facts. The evaluator needs to be aware that child-custody litigants typically attempt to present themselves in an extremely positive light and present the opposing litigant in an extremely negative light. Such response-style considerations make ferreting out the truth difficult, and in the end, such a fact-finding role is best left to the court.

A second consideration in these cases is temporal. Even if the evaluator concludes that some of the above risk indicators have occurred, the evaluator must consider when they occurred. The longer the period of good adjustment between these risky behaviors and the time of the evaluation, the less weight the risky behaviors would have. The evaluator is addressing the parent's current and recent adjustment, motivation for change, as well as any plan for managing past problematic behavior.

In a contested custody case in which the father has downloaded child pornography, all the above considerations apply; that is, the evaluator needs to consider specifically how that behavior has affected parenting ability. In addition, however, when the parent has downloaded child pornography, it is necessary to determine whether this parent's sexual interest pattern is pedophilic and therefore whether the children are at risk for direct sexually abuse. Conventional risk assessment for sexual recidivism can only be used in case there is an actual conviction for a child sex offense. These instruments are not validated on fantasy-based offenders and cannot be used for this group.

Other case-specific factors worth considering when assessing ISOs include online contact with other users interested in child sexual-abuse images, security procedures installed on the client's computer, or underlying motivations of the offending behavior. In general, a collaborative approach with police, correctional evaluators, or forensic computer experts is strongly recommended to understand the context and extent of the offensive behavior.

Because Internet child-pornography offending is poorly researched, it may be tempting for an evaluator to rely on unstructured, idiosyncratic assessment criteria. We recommend a careful exploration of the variables mentioned above. Areas of concern might benefit from further exploration through consultation with a specialist. Clear communication about strengths and limitations of both the examinee and of the methods used to evaluate the examinee will allow the court to make a more informed decision about parenting time and responsibility.

## Appendix 1

Case 1: This is a parenting evaluation case in which the father, John Viewer (separated from wife but not yet divorced) is presently required to have supervised visitation with his two daughters, ages six and eight years old. The father has a history before marriage of sexually compulsive behavior, including visiting strip bars, getting lap dances, and having multiple casual sexual relationships (all with consenting adult women). After he married, he eliminated all such behavior for some years. However, since being laid off from his job as a financial planner, he remained home to care for the children while his wife continued working as a software-marketing executive, a job that required her to work long hours with frequent travel. He stated that loneliness led him to enter sexually explicit Internet chat rooms and to viewing/downloading adult pornography. He reportedly entered into sexual online chatting with numerous women and began an extramarital affair with one of these women. After separation, psychological evaluation by the wife's psychological expert found him to be a "sexual addict" and recommended that he have only supervised visitation with his children (who were then being cared for by a nanny), because his sex addiction might cause him to be inattentive, thereby neglecting his children's needs. However, during the time he had cared for the children, there were no complaints regarding the quality of his care.

Since separating, Mr. Viewer has stopped frequenting Internet chat rooms. He did, however, use an online dating service, which led him to engage in one one-night stand. He then began attending Sex Addicts Anonymous meetings and engaging in psychotherapy. He is presently involved in an ongoing romantic relationship with a woman he met at a Parents-without-Partners meeting. He is petitioning the court for custody, since he is still unemployed and can provide substantial parenting time to the children.

Analysis: Case 1 does not involve Internet child pornography, only adult pornography. Consequently, there is no rating at all on the COPINE scale (Combating Paedophile Information Networks in Europe; a rating scale for child pornography frequently used in the United Kingdom). One might wonder why this example is being addressed at all. The issue here is a more general one: to what extent is sexual preoccupation with Internet sexual stimuli relevant in deciding parenting time and responsibility issues? We have seen cases in which the parent, usually the father, is not engaged in any viewing of illegal pornography, but nonetheless has his parenting time or responsibility curtailed because of the presumed threat of neglect of the children due to his preoccupation with Internet (or non-Internet) sex.

## Appendix 2

Case 2: Parenting evaluation case in which the father, John Jackson had downloaded some child pornographic images from a peer-to-peer Internet program. He then deleted these images, which placed them in the recycle bin. His wife came across these images on the computer, after which she reported the situation to the police. Jackson has criminal charges pending. The couple has separated, and Mrs. Jackson has

custody of their five-year-old son. Mr. Jackson is required to have supervised visitation. Before the separation, Mr. Jackson had been the primary breadwinner, and Mrs. Jackson had worked part-time; nonetheless, Mr. Jackson had been an active, involved father and had considerable parenting time with their son. There had been no claims that he had ever been abusive or neglectful with their son when previously caring for him. During a telephone interview, Mrs. Jackson reported a number of concerns regarding her husband. She indicated that she first found 20 pornographic files on the primary computer that her husband and she use. She examined one of the files, and it contained a number of individual images in a slideshow focusing on what to her appeared to be child pornography. She glanced at some of the other files, and they contained pornography as well, although it was difficult for her to determine the percentage that were clearly focused on minors, given that some of the teenage girls in the pornographic images may have been of legal age but simply appeared young. However, at least one appeared to be child pornography, containing a sexual interaction between an adult woman and obviously underage boy. Mrs. Jackson also reported that Mr. Jackson had indicated to her that he masturbates six or seven times per day. Other than just her level of concern about his high level of masturbation itself, she also became concerned more broadly regarding her husband's ability to properly care for their son. She wondered how he could possibly devote sufficient attention to their son if he were masturbating that much each day while ostensibly caring for the boy.

During the evaluation, Mr. Jackson reported that he masturbated once per day to adult heterosexual fantasies, not six or seven times per day as claimed by his wife. He reported that during two periods, one a few years ago and another more recently, he had used peer-to-peer programs to download pornography. He acknowledged that he used a wide range of search terms—including BBW (Big Beautiful Women), mature, Lolita, and nymphet—simply to explore the range of pornography that might be available. He indicated that when he found that he had inadvertently downloaded any child pornography, he immediately deleted these images, or at least so he believed.

A forensic analysis of Mr. Jackson's computer by federal authorities found that he had over 1,000 still images and videos of adult pornography of a wide range of types. He also had approximately ten images of possible child pornography, involving sexual activity between adult males and teenage girls, although it was unclear whether the girls were underage. There was also one image of an adult woman having sexual intercourse with what appeared to be an underage boy, although again it was difficult for the authorities to determine the boy's exact age. Most, although not all, of the questionable images were found in the recycle bin, suggesting that he had indeed tried to delete these images.

**Acknowledgements:** The authors thank Gregory DeClue and two anonymous reviewers for their helpful comments on earlier drafts of this article.

Received November 17, 2009; revision submitted May 18, 2010; accepted June 6, 2010



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