

# WATCHING THE WATCHERS: TASKFORCE ARGOS AND THE EVIDENTIARY ISSUES INVOLVED WITH INFILTRATING DARK WEB CHILD EXPLOITATION NETWORKS

Paul Bleakley

*The Police Journal*

## ABSTRACT

As the kind of technology used by offenders advances, it has become increasingly necessary for global law enforcement agencies to adopt proactive strategies in order to effectively combat the threat posed by the organisation of child exploitation networks on the Dark Web. In spite of concerns regarding the collection of evidence, Queensland Police's Taskforce Argos has cultivated a reputation for success in the covert infiltration of online forums dedicated to child exploitation material due largely to the relatively loose restrictions placed on it which allow officers to commit a wide range of criminal acts whilst conducting controlled undercover operations.

Key words: child exploitation material, child pornography, policing, law enforcement, jurisdiction, evidence.

## INTRODUCTION

Organised transnational criminal networks have proven to be one of the most significant beneficiaries of the digital age. An individual who may not otherwise have an opportunity to commit criminal offences is able to use the Internet to foster connections that normalise their

deviance and provide opportunities to commit actual, tangible transgressions. More often than not, these transgressions continue to take place in the digital realm in the form of consuming and sharing child pornography; on some occasions Dark Web forums can also facilitate transgression in the physical realm, by making connections between consumers and producers of exploitation material, providing an opportunity for consumers to transition into participation in the production of illicit material. Given the constantly-evolving nature of the Internet, it has become increasingly incumbent on law enforcement agencies to develop innovative strategies to match those of their online adversaries. Difficulties for the investigation of organised crime networks have become even more pronounced with the migration of much of this criminal activity to the Dark Web, which is made up of a series of interconnected peer-to-peer networks that are not indexed by conventional search engines or accessible by the ordinary Internet user. Forums and file sharing websites hosted on the Dark Web operate in a way that makes it challenging for police and Internet Service Providers to identify users, or to proactively shutdown websites that facilitate criminal activity (Broadhurst et al, 2014). By using web browsers that allow use of the Dark Web like Tor and Freenet to obscure their online activity, criminal users are afforded a sense of anonymity that allows them ease of access to a range of criminal networks facilitating illicit behaviours from drug trafficking to child exploitation material (Broadhurst et al, 2014).

Amid the wide variety of illicit activities facilitated by the Dark Web, the distribution of child exploitation material stands apart as a matter of serious concern for law enforcement agencies. Not only does the Internet allow individuals to share pornographic material with only a few keystrokes, the establishment of deviant communities on the Dark Web has exponentially increased the risk for vulnerable children as demand rises for the supply of original child exploitation material (Oswell, 2006). To some degree, the increasing accessibility of Dark Web

platforms allows individuals to meet this supply with a sense of security, and the belief that their actions are imperceptible to law enforcement agencies concerned with stemming the flow of child exploitation material on the Internet. Before conducting arrests and prosecuting suspected offenders, it is necessary for policing organisations to first identify those involved in the clandestine online communities in which criminal activity takes place, and particularly those that are directly engaged in the abuse of children for the purposes of creating child exploitation material. As a means of obtaining the evidence required to support a successful prosecution of otherwise anonymous users on the Dark Web, police claim that it is essential to infiltrate online forums in an attempt to identify both abusers and victims; to do so, police argue that it is necessary to establish a controlled surveillance operation in which officers covertly act as administrators or moderators of illicit forums (Lusthaus, 2012). In Queensland, any operation that is conducted using undercover tactics and may require an officer to engage in illegal activity in the course of their investigation is heavily regulated and subject to considerable scrutiny. Described as ‘controlled operations’, investigations of this nature conducted by Taskforce Argos often require officers to participate in the distribution of child exploitation material in order to maintain cover and effectively entrap as many offenders as they possibly can. Although these actions are carried out with the goal of capturing sex offenders, police operations involving the dissemination of child exploitation material have attracted considerable controversy and the suggestion that officers took purposeful action that incited others to commit child abuse.

## METHODOLOGY

Even though global law enforcement agencies share the goal of investigating and prosecuting criminal offences, there are clear distinctions in the standards of practice expected of police

across different nations and socio-cultural systems. With the regulations governing police powers differing considerably between jurisdictions, it is useful to focus attention on a context in which law enforcement is granted a wide scope of authority in relation to covert infiltration. Whilst the vast majority of policing organisations are offered a certain degree of flexibility when it comes to covert intelligence-gathering operations, the Queensland Police Service's Taskforce Argos was chosen as a focal point due to the expansive powers afforded to it under the state's *Police Powers and Responsibilities Act 2000*. Under the provisions of this act, officers in Queensland have the authority to apply to the courts for permission to commit criminal offences in the course of an investigation. Officers in Queensland are empowered by a system that offers indemnity for a broad range of criminal offences; most pertinently for officers attached to Taskforce Argos, it is possible to petition the court to allow officers to disseminate child exploitation material in the course of a covert investigation (Hoydal et al, 2017). Due to the relative lack of restriction on Taskforce Argos in comparison with its international counterparts, the Queensland child exploitation unit has become an integral participant in many multinational investigations conducted into the supply of child exploitation material on the Dark Web; its position at the centre of several major covert operations makes Taskforce Argos the perfect framework through which it is possible to understand the implications of using covert tactics when investigating potential criminal offences in a digital environment.

## LITERATURE REVIEW

The vast majority of contemporary focus in the area of child exploitation focuses on the production and dissemination of illicit material over the Internet; that said, it is important to bear in the mind that methods of investigation child exploitation material predates the current

era of digitally-assisted offending. Shouvlin (1981, p. 535) notes that “the incidence of sexual exploitation of children [had] risen dramatically” during the 1970s. Shouvlin goes on to suggest that it is likely that this increase was simply a rise in reported cases, as opposed to an actual increase in offences taking place. Tyler and Stone (1985) support Shouvlin’s position that child sexual abuse has taken place throughout history, going further in arguing that technological advancement has simply provided more opportunities for offenders to exploit children in new ways through the production of child pornography. It was apparent to Tyler and Stone that child exploitation material could not be combatted without a global approach: they argue that, in spite of the fact that many jurisdictions had moved swiftly to prohibit production and possession of illicit material, the lack of a worldwide approach in 1985 meant that there would always be avenues by which producers and users could access exploitative content. Goldstein (1987) built on this early work in relation to child pornography with the publication of one of the first instructional manuals dealing with the investigation of child exploitation material. By incorporating insights gained by interviewing victims and offenders, as well as examining the legal and evidentiary concerns of child pornography investigations, Goldstein was able to produce a step-by-step guide for investigators that provided a standard of case management for law enforcement agencies prior to child exploitation offending moving into ever-more complex digital realm.

Increased access to the Internet and the development of new communications technologies that accompanied this access has forced a significant paradigm shift in the way that investigators must approach the production and, particularly, the distribution of child sexual exploitation material. Ferraro and Casey (2005) note that undercover operations are often an important tool in gathering evidence against online networks without alerting participants that they are under active investigation; nevertheless, they also caution police not to ignore their ethical obligations

in the pursuit of a culprit. Ferraro and Casey refer to the ‘golden rules’ for investigating child exploitation online as established by Astrowsky and Kreston (2001), who assert that “it goes without saying that the job of law enforcement is not to add to the volume of illegal materials available on the Internet” by sharing child pornography whilst undercover (p. 1). Taskforce Argos investigators would dispute what is meant by ‘adding to’ to the volume of illegal materials available to sexual predators of children, yet it is interesting to note that Astrowsky and Kreston are clear in their position opposing any and all dissemination of child pornography in the course of an undercover investigation.

Wells et al (2007) highlight the difficulties inherent in conducting an undercover investigation into child sexual exploitation, even when using undercover or otherwise covert tactics; they argue that it is simply not enough to charge an individual with possession of child pornography if a victim cannot be identified and proven to be unequivocally under the legal age of consent. In their recommendations, Wells et al note the “significant challenges” posed by investigating child exploitation material on the Internet and, again, call for a globally-coordinated approach towards online child exploitation groups of the kind that Taskforce Argos has become involved in with increasing regularity in recent years. Krone (2005) makes particular reference to the powers afforded to Taskforce Argos under the *Sexual Offences (Protection of Children) Amendment Act 2003*. Krone’s primary focus is on Taskforce Argos’s actions posing as children online in order to identify those ‘grooming’ children for sexual abuse; he notes that the phrasing of the amendment giving police the power to investigate grooming as a criminal offence is such that it allows them broadly extra-territorial jurisdiction. Under this amendment, Taskforce Argos holds jurisdiction if the offender or victim is “either in Queensland or elsewhere” and, as such, has a relatively open brief to investigate criminal activity with even the most tangential connection to the taskforce’s primary jurisdiction of Queensland. Krone’s

assessment of the powers afforded to the Queensland Police is relevant to the discussion of the factors that makes it such an integral global partner when it comes to investigating the proliferation of child exploitation material.

In the global law enforcement community, Taskforce Argos has become a favoured international partner in the investigation of online child exploitation distribution due to the relatively lax restrictions placed on it by the judicial system. As such, the reasons that the methods employed by Taskforce Argos are not allowable in other jurisdictions must be examined in order to determine the ethical basis of the unit's investigatory approach. A central concern is that evidence gained through illegal conduct could be deemed inadmissible due to the illicit way in which it was obtained. Erdely et al (2010) note that "at each step in an investigation, the investigator's behaviour is bound by law... first and foremost, the investigator will be liable for lawbreaking of their own" (pp. 98-99); intelligence obtained as a result of illegal action is dubbed 'fruit of the poisonous tree' and typically results in a case being inextricably compromised. An investigation based on evidence that would otherwise fall under the category of fruit of the poisonous tree can proceed, however, if it is determined that an investigator acted in 'good faith' when engaging in the criminal behaviour that led to evidence being discovered (Fennelly, 1991).

Good faith is predicated on the concept that invoking an exclusionary approach to blatant evidence of illegal conduct "serves only to protect those upon whose person or premises something incriminating has been found" (Fennelly, 1991, p. 1087). Use of covert undercover tactics in targeting child exploitation networks is a central area of dispute for those arguing in favour of a 'good faith' exception for criminal conduct by police. As Joh (2009, p. 157) states,

“the practice of authorised criminality is secret, unaccountable, and in conflict with some of the basic premises of democratic policing”; in contrast, Vendius (2015) argues that international experts are generally in agreement that “a proactive approach, including the use of undercover tactics, was regarded as crucial... [and] is especially valuable when trying to infiltrate paedophile circles where abuse is actually taking place” (p. 12). It is apparent that the type of undercover operations engaged in by Taskforce Argos exist in an ethical grey area in international policing literature: it is clear that engaging in criminal behaviour to gather evidence is ordinarily considered inappropriate, yet there is also a widespread agreement that these tactics work when it comes to infiltrating online child exploitation networks.

## DISCUSSION

### [A background to Taskforce Argos and child protection in Queensland](#)

Established at the outset of the Internet era in the late 1990s, Task Force Argos was the first branch of the Queensland Police Service to address the challenges posed by the supply of child exploitation material via digital networks. Officers attached to Task Force Argos were engaged in undercover operations targeting potential child sex offenders in Internet chatrooms from at least 2002; posing as children in an effort to make contact and gather evidence against potential offenders, Task Force Argos was successful in identifying a number of repeat offenders that were actively engaged in abusive behaviours and were in possession of tens of thousands of illicit images of child sexual abuse (Krone, 2015). The type of network disrupted by these early undercover operations paled in comparison to those targeted by Task Force Argos in the mid-2000s and, in particular, after its minor involvement in the multinational Operation Auxin in 2004. After it was discovered by the FBI that a child pornography website was processing



credit card transactions through a Florida-based company, the payment records were used by law enforcement agencies worldwide to investigate and prosecute suspected offenders.

Police arrested 191 individuals in Australia alone as a result of Operation Auxin, 57 of whom were in Taskforce Argos's immediate jurisdiction of Queensland (Dixon, 2005). While police in Queensland were not actively involved in carrying out Operation Auxin, the potential presented by tracking those in possession of child sexual exploitation material was made clear by the coordinated action and would go on to become a staple aspect of Taskforce Argos's strategy going forward. Taskforce Argos's adoption of tactics building on those used in Operation Auxin was made clear through its involvement in Operation Achilles in 2006. A direct collaboration with the FBI, this covert investigation ran for over two years and focused on the infiltration of an international network of child sexual offenders; due to the comparatively loose restrictions on the actions taken by Taskforce Argos in its controlled operations, the Queensland-based unit took the lead in infiltrating the online abuse community and monitoring the material shared by its members, and was responsible for passing intelligence gathered to other partners in global law enforcement (Bowles, 2014). Operation Achilles led to the arrest of over 100 individuals for the possession of child exploitation material, the removal of more than 70 children from abusive situations and the closure of four commercial child exploitation websites (Munro-O'Brien, 2009).

### [Infiltrating and controlling Dark Web abuse forums by Taskforce Argos](#)

Over more than a year, the multinational Operation Artemis focused on two interconnected child exploitation forums on the Dark Web: the Giftbox Exchange and Child's Play. Taskforce Argos's involvement with this investigation began in May 2016 after being offered access to

the account details of a European moderator of the Giftbox Exchange by a third-party law enforcement agency; this European agency sought out Taskforce Argos due to the stricter regulations placed on controlled operations in its own jurisdiction, as well as Taskforce Argos's previous experience in Operation Rhodes (Bowles, 2014). As a moderator, officers from Taskforce Argos did not have full control of the Giftbox Exchange and could only monitor the activity of users on the site. It was during this phase of the operation that another forum, Child's Play, was founded: officers monitoring the Giftbox Exchange suspected a connection with Child's Play due to a range of similarities in messages posted by Giftbox Exchange moderator CuriousVendetta and Child's Play founder WarHead (Hoydal et al, 2017). As it happened, these suspicions proved valid: both usernames could be traced to a Canadian man, Benjamin Faulkner, who was subsequently arrested along with Giftbox Exchange founder Patrick Falte in Montpelier, Virginia, on 1 October 2016 (Green, 2016). Faulkner and Falte had been tracked by the U.S. Department of Homeland Security, and were arrested by American authorities shortly after having participated in the rape of a four-year-old girl; though both men were subsequently charged and sentenced to lengthy prison terms, U.S. law enforcement was able to extract the passwords for Child's Play from Faulkner, which were then passed on to Taskforce Argos and allowed them to conduct an operation similar to that which took place in Operation Rhodes (Hoydal et al, 2017).

Assuming Faulkner's online persona of WarHead was a coup de grace of sorts for Taskforce Argos: whilst The Love Zone had a membership of around 45 000, the number of users on Child's Play was significantly higher with around one million registered accounts at the time Taskforce Argos took control (McInnes, 2017). During the time that Taskforce Argos ran Child's Play, the spread of child exploitation material on the forum was exponential. At the time that police took control of the site, less than 6000 posts with exploitative images had been

posted on the site; by the time Child's Play was shut down eleven months later, this number had more than doubled to over 12 000 posts (Hoydal et al, 2017). Most concerning from a law enforcement perspective, while acting as WarHead it was expected that police would post a monthly status update which would include an image of child exploitation to 'prove' to members that the site had not been compromised; this activity would not be legal in many international jurisdictions, yet was an ability afforded to Taskforce Argos under the auspices of a "controlled operation" under the *Police Powers and Responsibilities Act 2000*. Paul Griffiths, one of Taskforce Argos's lead investigators, told *VG* magazine that the images shared were already in circulation, and that it was the view of he and his colleagues that the benefits of re-sharing the images outweighed the negatives associated with perpetuating the dissemination of the material (Hoydal et al, 2017). Taskforce Argos operated Child's Play as WarHead for eleven months before shutting down the forum and, based on the principle that it only shared exploitative material with WarHead's monthly status update, it could be assumed that child abuse material was shared by officers on at least eleven separate occasions. The covert phase of Operation Artemis came to a conclusion on 13 September 2017 with the closure of Child's Play: as a result of the undercover investigation, Taskforce Argos was able to identify up to 90 primary targets worldwide and over 900 users that it believed should be arrested for either producing or possessing child exploitation material (Hoydal et al, 2017).

### [Protecting against evidentiary exclusion the 'fruit of the poisonous tree' doctrine in Queensland](#)

Regardless of the results achieved in Taskforce Argos's covert operations, the methods adopted by Queensland police in order to infiltrate targeted networks of child sexual exploitation continue to prove controversial. It is evident that officers attached to Taskforce Argos have had the opportunity to develop a clear expertise in combating child pornography on the Dark Web;

that said, the initial partnerships forged between Taskforce Argos and its international counterparts resulted first and foremost as a by-product of the lax restrictions placed on controlled operations in Queensland (Bowles, 2014). Tactics that were essential to the success of investigations like Operation Rhodes and Operation Artemis would not have been legal in other jurisdictions, and as such the evidence gained by the use of these methods would be inadmissible in court. Unlawfully obtained evidence is often labelled as “fruit of the poisonous tree” in the law enforcement community, a reference to the fact that it is indelibly tarnished by the methods by which it was acquired (Erdely et al, 2010). Pitler argues that “there must be a significant relationship between the unlawful activity and the evidence seized to warrant exclusion” in a judicial setting (1968, p. 579). If the illegal actions of a police officer were a fundamental element in the acquisition of the evidence in question, Pitler asserts that a reasonable level of causation would exist to allow for it to be set aside by a trial judge. In the vast majority of cases, the processes governing evidence-gathering by police officers are fairly straight-forward, as would the definitions around what would constitute fruit of the poisonous tree; the legal indemnities associated with controlled operations by specialist units like Taskforce Argos serve to complicate these established protocols and, in the Queensland context, provides for an almost limitless set of exceptions that allow officers to act with virtual impunity.

In analysing the extent to which Taskforce Argos’s investigative methods attract the risk of bearing fruit of the poisonous tree, it is important to differentiate between what is allowable under the provisions of the *Police Powers and Responsibilities Act 2000* and what is not. The act is explicit in delineating the powers afforded to Queensland police officers whilst engaged in a controlled operation. Authority is given to participants in a controlled operation under section 258 of this legislation to engage in a broad range of criminal conduct if they deem it

“reasonably necessary” to maintain their cover or to otherwise “take advantage of an opportunity to gather evidence about a relevant offence” (p. 303). Of particular note when considering the global-focus of Taskforce Argos is the broad scope in which the *Police Powers and Responsibilities Act 2000* defines the jurisdiction of officers participating in controlled operations. The act establishes that indemnities are provided to those involved in a controlled operation “despite any other Act or law of this jurisdiction... whether in this jurisdiction or elsewhere” (p. 302). Establishing a form of extra-territorial jurisdiction is a key provision when it comes to the work performed by Taskforce Argos on Dark Web forums like Child’s Play, in a similar manner to the way that Krone (2005) argues that the *Sexual Offences (Protection of Children) Amendment Act 2003* is a necessary legislative measure to enable the Queensland police to pursue those grooming children in online chatrooms. By providing a protection for extra-jurisdictional action each of these acts protect against a common source of evidentiary exclusion, that being occasions in which an operation is conducted outside of an agencies pre-defined jurisdictional authority (Tullis & Ludlow, 1975). If not for these extensions in the parameters of police jurisdiction, it would be far more complicated for Taskforce Argos to obtain usable intelligence on the Dark Web. A forum like Child’s Play, with its American-Canadian administrators and a server based in Europe, would be arguably off-limits to Taskforce Argos under ordinary circumstances; this would effectively curtail investigations like Operation Artemis before they even began and necessitate a complete overhaul in the strategies used by the Queensland police.

There are several clauses in the *Police Powers and Responsibilities Act 2000* that restrict the actions of officers like those serving in Taskforce Argos. Aside from ruling out immunity for criminal actions causing death or serious injury, the *Police Powers and Responsibilities Act 2000* specifically precludes indemnity for conduct that “involve[s] the commission of a sexual

offence against any person” in the course of an investigation (p. 303). It is this clause that presents the most significant concern for Taskforce Argos when it comes to conducting long-term covert investigations such as the administration of Child’s Play in 2016/17. Unlike previous controlled operations conducted by Taskforce Argos, it was required of officers posing as Child’s Play founder WarHead to post regular status updates featuring images of child pornography with some regularity over the eleven month period that Queensland police had control of the forum (Hoydal et al, 2017). From a judicial standpoint, it is fairly ambiguous as to whether posting images of child exploitation in itself constitutes incitement to commit an offence; what is more explicit, however, is the type of language that accompanied these images as part of WarHead’s monthly status update. *VG* reports that on 3 January 2017 - several months after Child’s Play was taken over by Taskforce Argos – an officer posing as WarHead posted a message to users reading “I hope that some of you were able to give a special present to the little ones in your lives, and spend some time with them” (Hoydal et al, 2017).

In an interview with *VG*, senior officer Paul Griffiths admits that the use of such language could be interpreted as encouraging or inciting the commission of an offence against a child. Nevertheless, a legislative loophole exists in the *Police Powers and Responsibilities Act 2000* that could be used to avoid prosecution for offences of this nature: subsection 3(d) of section 258 of the act states that an officer is considered criminally responsible if they encourage or induce a person to commit an offence “of a kind the person could not reasonably be expected to have engaged in if not encouraged or induced by the officer to engage in it” (p. 303). It could be argued that users of a Dark Web forum dedicated to child abuse like the members of Child’s Play are already predisposed to commit a sexual offence against children; as such, the ambiguous encouragement of an undercover officer could not be considered to induce them to commit a criminal act that they “could not reasonably be expected to have engaged in” absent

the intervention of undercover police officers. As in most circumstances, context is key in determining the extent of protection afforded to police in controlled operations like those carried out by Taskforce Argos. Due to the extensive nature of the protections in the *Police Powers and Responsibilities Act 2000*, it is clear that evidence gathered by Taskforce Argos through investigations like Operation Artemis would not be considered fruit of the poisonous tree in cases presented before a court that acts under the judicial authority of Queensland.

### Cross-jurisdictional issues arising from Taskforce Argos's methods

Though the provisions of the *Police Powers and Responsibilities Act 2000* support the admissibility of evidence in Queensland, this is not to suggest that intelligence that is lawfully obtained by Taskforce Argos would be considered as fruit of the poisonous tree in other jurisdictions. Reidenberg (2005) notes that “the current Internet technology creates ambiguity for sovereign territory because network boundaries intersect and transcend national borders” (p. 1951); whereas Reidenberg sees this as a problem for global law enforcement, the collaborative partnerships that exist between Taskforce Argos and its international counterparts indicates that a lack of clearly-defined sovereignty has in fact proven beneficial in the pursuit of online child exploitation networks. Earlier investigations such as Operation Achilles and Operation Rhodes were predicated on a vague sense of jurisdictional authority in the sense that Taskforce Argos's involvement was triggered by the reasonable belief that offenders were operating within Queensland's borders (Munro-O'Brien, 2009; Safi, 2016). Whilst the field of digital law is constantly evolving, the concept of personal jurisdiction on the Internet was firmly established by the High Court of Australia in *Dow Jones & Co. v. Gutnick* in 2002. It was determined by the court in this case that U.S. organisation Dow Jones were subject to Australian defamation law arising from posts published on one of its websites, in spite of the

fact that the post in question had been written in the U.S. and published on a U.S. based server (Garnett, 2004). As a result of this case, it was established under Australian law that the location in which the offence caused harm could be considered a ‘personal jurisdiction’ and it was just as possible to pursue legal action in that venue; the verdict in *Dow Jones & Co. v. Gutnick* led to a more ambiguous re-definition of jurisdiction that is to the benefit of Taskforce Argos when it comes to justifying its involvement in high-profile multinational investigations.

By the time Operation Artemis commenced in 2016, this pretext of legitimate jurisdictional authority as established by *Dow Jones & Co. v. Gutnick* had been all but abandoned in order to focus on identifying and shutting down criminal networks regardless of the location of offenders or victims. As noted, the ability to act across jurisdictional borders is given to Queensland police under the provisions governing controlled operations in the *Police Powers and Responsibilities Act 2000*; there is no condition in this act that officers must reasonably believe an offence is being committed or will be committed in Queensland, giving specialist teams like Taskforce Argos the authority to act outside of its jurisdiction in a loosely-defined range of situations. Providing its expertise to assist the investigations of international partner agencies is one of the circumstances in which extra-jurisdictional actions carried out by Taskforce Argos have been routinely approved by Queensland authorities, particularly in the period since the unit achieved global acclaim for its successes in Operation Achilles (Bowles, 2014). A grey area does exist, nevertheless, in terms of whether investigations like Operation Rhodes and Operation Artemis should be considered a collaborative partnership or a case of jurisdictional forum shopping by international law enforcement agencies. It appears that there was little pretext for the involvement of Taskforce Argos in the initial investigation into the Giftbox Exchange and Child’s Play Dark Web forums. Indeed, officers from Taskforce Argos originally assumed the identity of a moderator on the Giftbox Exchange in May 2016 after



being supplied their log-in details by a European policing agency that had arrested them on charges entirely unrelated to offences being conducted in Queensland; in the same manner, the security details for Child's Play supplied to U.S. law enforcement by Faulkner several months later were also supplied to Taskforce Argos with the explicit understanding that they would engage in a covert infiltration of the forum using Faulkner's WarHead identity (Hoydal et al, 2017).

It is clear that this type of covert operation was not passed over to the Queensland police solely due to its much-touted expertise in the field: it appears that Taskforce Argos has been singled-out for involvement in investigations of this nature largely due to the fact that it is legally able to engage in a broader range of illegal activity during controlled operations than is allowed in other jurisdictions. To this extent, it seems that the global partners of Taskforce Argos have engaged in a process of jurisdictional forum shopping in which the primary venue for a covert operation is purposefully selected in order to maximise the ability of investigating officers to use tactics that would otherwise be considered illegal in order to maintain cover and gather evidence against suspected offenders (Uchida et al, 1988). Out-sourcing such operations to partners like Taskforce Argos serves as a work-around of sorts, with international policing agencies benefiting from the looser restrictions placed on its partners by using evidence gathered by Taskforce Argos to build a case; had this evidence been obtained in the same manner by one of Taskforce Argos's partners, it is likely that it would have been considered inadmissible as the methods used in the police investigation would be considered unlawful under the restrictions applied in the jurisdiction under which it ordinarily operates.

[Good faith provisions and the use of questionably-obtained evidence](#)

In spite of the fact that intelligence gathered by Taskforce Argos by use of its covert tactics may be tarnished from the perspective of other jurisdictions, 'good faith' principles can be applied that allow for the evidence to be used by international partners. Whilst it is generally difficult to ascertain intent, it is an option available to the court to consider the motivations of a police officer's actions in determining whether evidence obtained by questionable means can be considered admissible in a criminal trial (Uchida et al, 1988). In cases relying on the application of a good faith principle, a variation of the reasonable person test applies in which an officer must prove that "a reasonable officer possessing the same information as the arresting officer would believe his or her conduct was lawful" (Lopuszynski, 2004, p. 1360). An argument could be made that officers using evidence supplied by Taskforce Argos could be considered to act in good faith given that the tactics used to obtain the evidence were sanctioned under the laws of the jurisdiction in which the covert operation was carried out. Any intelligence passed on to partner agencies by Taskforce Argos was obtained in a lawful manner and, as such, officers using this information to build a case could argue that they are acting in trust with their international counterparts; it could also be argued that, no matter how this intelligence was obtained, the good faith principle requires an officer to act if the exclusion of such evidence "serves only to protect those upon whose person or premises something incriminating has been found" (Fennelly, 1991, p. 1087). If it is determined that not using the kind of intelligence supplied by Taskforce Argos would lead to a child being at increased of sexual abuse, a court may find that an officer acted in good faith that their actions were justified and allow for the inclusion of evidence that would be considered inadmissible in any other context.

There is little doubt that a claim for acting in good faith could be applied in situations wherein police used the intelligence of international partners to successful bring charges against a child

sexual offender. It is reasonable to assume that, should a subsequent raid or surveillance produce further evidence of offending, a court would not question the means by which a law enforcement agency was originally able to identify a suspect. That said, the application of good faith becomes more ambiguous when it is considered in the context of cross-jurisdictional cooperation between Taskforce Argos and its international partners. As noted, good faith is typically predicated on an arresting officer's genuine belief "that his or her conduct was lawful" (Lopuszynski, 2004, p. 1360); what remains in doubt is the specific definition of lawful, and under which jurisdictional authority lawfulness is determined. In the case of Operation Artemis, the log-in details of both Faulkner and an unidentified moderator of the Giftbox Exchange were supplied to Taskforce Argos by multiple international policing agencies with the clear understanding that the Queensland-based unit would conduct a covert infiltration using tactics that were not legally available to the agencies that were originally in receipt of the information (Hoydal et al, 2017).

By the simple virtue of passing on this intelligence, it is evident that Taskforce Argos's partner agencies were aware that the methods necessary to conduct an investigation like Operation Artemis would not be lawful in their own jurisdiction. Taken further, it could be assumed that any intelligence received from Taskforce Argos subsequent to the supply of log-in details could be assumed to have been obtained in a manner that - under their own legal system - was at best questionable, and at worst criminal. If police were to simply receive information obtained by Taskforce Argos without any prior involvement, it could certainly fall under the good faith principle; if that agency was actively involved in outsourcing an operation to Taskforce Argos with the understanding that it would likely use tactics considered illegal in its own jurisdiction, it is probable that officers from a partner agency were aware that the methods were unlawful and, as such, the good faith principle would be voided. It is clear that complications exist at the

intersection of international collaboration and good faith use of the evidence supplied by global partner agencies. A case could be made that policing agencies that hand off investigations to Taskforce Argos with the knowledge that it uses investigatory methods illegal in their own country with the intent of using intelligence obtained through these tactics could be considered to be engaged in conspiratorial behaviour that would invariably compromise its investigations and put the court in a position where it was forced to disregard the concept of good faith and rule evidence presented by police to be inadmissible (Lopuszynski, 2004, pp. 1369-1370). The ramifications of a ruling of this kind are significant, and potentially place an unquantifiable number of children at a greater level of risk by causing criminal trials against offenders to be thrown out of court.

## CONCLUSION

It is clear that the work performed by Taskforce Argos has led to a considerable amount of child sexual offenders being brought to justice, and a number of websites dedicated to child sexual exploitation material being closed down. By this logic, it serves as a viable model for the investigation of child abuse networks by covert means in a way that achieves results. That said, it is problematic to base an assessment of Taskforce Argos solely on the results that it is able to achieve; doing so would be to take a utilitarian perspective in which the ends justifies the means and ethical considerations are abandoned in the pursuit of a goal (Skolnick, 1982). In many respects, the kind of cross-national investigations that Taskforce Argos participates in take place in a digital environment that is constantly evolving due to rapid advancements in the technology used to obscure the identities of offenders; as a result, there has been relatively little analysis or evaluation of Taskforce Argos's clandestine tactics on the Dark Web. In particular, it is essential for further research to determine the extent to which the evidence obtained by

Taskforce Argos would be considered tarnished by the legal systems under which the global law enforcement partners of the Queensland Police operate. It is without question that the actions taken by Taskforce Argos are legal under the law governing controlled operations in Queensland. It is clearly outlined in the *Police Powers and Responsibilities Act 2000* that Queensland police have broad powers to commit criminal acts that are deemed reasonably necessary in order to maintain cover and effectively conduct a covert investigation; whilst there are provisions precluding serious criminal acts, these terms are generally non-restrictive and are further qualified by additional clauses that govern the legal definition of what is considered as inciting a criminal act.

While the covert activities of Taskforce Argos are protected in the Queensland legal system, it remains in doubt as to if this intelligence can be lawfully used in jurisdictions where such methods would be deemed unlawful. In cases in which a police investigation is tarnished by unlawful conduct, most jurisdictions apply some form of the fruit of the poisonous tree doctrine that would rule evidence gathered by illegal means as inadmissible in a criminal trial (Pitler, 1968). While this research highlights a potential weakness in the use of this evidence by Taskforce Argos's international partners, more specific efforts must be taken to contextualise this aspect of cross-national collaboration based on the rules of evidence in the respective countries in which prosecutions have been built on the basis of a Queensland Police investigation. It is the contention of this research that a cloud of ambiguity exists over the intelligence supplied by Taskforce Argos to its international partners in jurisdictions where the methods used by Queensland police would not be sanctioned; as such, a balance must be struck between the application of good faith principles in the use of this evidence, and a consideration of the extent to which Taskforce Argos's tactics are at odds with the general standards of that jurisdiction. In situations where an agency receiving intelligence was not involved in any way

with Taskforce Argos's operations, it could very well be the case that intelligence could be used in good faith to prevent the further victimisation of young people. Conversely, if an agency supplies information to Taskforce Argos with the expectation that it will use the intelligence to engage in covert action that the original agency would not legally be able to, it seems that the concept of good faith should be abandoned given the awareness of officers that evidence is being obtained by means that its own judicial system would consider unlawful. Though the distinction between these two scenarios appears relatively minor, the clear intentions of out-sourcing an illegal operation are categorically evident in the latter context and sets it apart from a good faith pursuit of justice.

## REFERENCE LIST

Astrowsky, B. and Kreston, S. (2001) Some Golden Rules for Investigating On-Line Child Sexual Exploitation, Update. *American Prosecutors Research Institute* 14(1). Available at: [http://www.ndaa-apri.org/publications/newsletters/update-volume\\_14\\_number\\_1\\_2001](http://www.ndaa-apri.org/publications/newsletters/update-volume_14_number_1_2001) (accessed 28 January 2018).

Bowles, R. (2014) *Rescuing Tara*. Bittern, VIC: Clan Destine Press.

Broadhurst, R, Grabosky, P, Alazab M, Bouhours, B and Chon, S (2014) An analysis of the nature of groups engaged in cyber crime. *International Journal of Cyber Criminology* 8(1): 1-20.

Dixon, N. (2005) Strengthening Child Pornography Laws: The Criminal Code (Child Pornography and Abuse) Amendment Bill 2004 (Qld). *Queensland Parliamentary Library* 2005/04. Available at:  
<http://www.parliament.qld.gov.au/documents/explore/researchpublications/researchbriefs/2005/200504.pdf> (accessed 2 February 2018).

Erdely, R., Liberatore, M., Kerle, T., Levine, B. N. and Shields, C. (2010) Forensic investigation of peer-to-peer file sharing networks. *Digital Investigation* 7: 95-103.

Fennelly, J. E. (1991) Refinement of the Inevitable Discovery Exception: The Need for a Good Faith Requirement. *William Mitchell Law Review* 17(4): 1085-1109.

Ferraro, M. M. and Casey, E. (2004) *Investigating Child Exploitation and Pornography: The Internet, Law and Forensic Science*. Burlington, MA: Elsevier.

Garnett, N. W. (2004) Dow Jones & Co. v. Gutnick: Will Australia's Long Jurisdictional Reach Chill Internet Speech World-Wide. *Pacific Rim Law and Policy Journal* 13: 61.

Goldstein, S. L. (1987) *The Sexual Exploitation of Children: A Practical Guide to Assessment, Investigation, and Intervention*. Boca Raton: CRC Press.

Green, F. (2016) Three men charged in alleged sexual assault of child. *Richmond Times-Dispatch*, 5 October. Available at: [http://www.richmond.com/news/three-men-charged-in-alleged-sexual-assault-of-child/article\\_79174236-2472-534f-8365-8ce722eb385d.html](http://www.richmond.com/news/three-men-charged-in-alleged-sexual-assault-of-child/article_79174236-2472-534f-8365-8ce722eb385d.html) (accessed 4 February 2018).

Hoydal, H.F, Stangvik, EO and Hansen, NR (2017) Breaking the Dark Net: Why the Police Share Abuse Pics to Save Children. *VG*, 17 October. Available at: <https://www.vg.no/spesial/2017/undercover-darkweb/?lang=en> (accessed 22 January 2018).

Joh, E. (2009) Breaking the Law to Enforce It: Undercover Police Participation in Crime. *Stanford Law Review* 62(1): 239-273.

Krone, T. (2005) Queensland Police Stings in Online Chat Rooms. *Trends & Issues in Crime and Criminal Justice* 301: 1-6.

Lopuszynski, N. L. (2004) Father Constitution, Tell the Police to Stay on Their Own Side: Can Extra-Jurisdictional Arrests Made in Direct Violation of State Law Ever Cross the Fourth Amendment's "Reasonableness" Line? *DePaul Law Review* 53(3): 1347-1400.

Lusthaus, J (2012) Trust in the world of cybercrime. *Global Crime* 13(2): 71-94.



McInnes, W. (2017) Queensland police take over world's largest child porn forum in sting operation. *Brisbane Times*, 8 October. Available at:  
<https://www.brisbanetimes.com.au/national/queensland/queensland-police-behind-worlds-largest-child-porn-forum-20171007-gywcps.html> (accessed 4 February 2018).

Munro-O'Brien, J. (2009) Pedophile ring offered live vision of abuse. *News.com.au*, 18 March. Available at: <http://www.news.com.au/national/pedophile-ring-offered-live-vision-of-abuse/news-story/3fa4b272332ea4063ff6f41ae5cd8bf8?sv=70e32ea81327ce125333ad2a5353c2d6> (accessed 2 February 2018).

Oswell, D (2006) When images matter: Internet child pornography, forms of observation and an ethics of the virtual. *Information, Communication & Society* 9(2): 244-265.

Pitler, R. M. (1968) The Fruit of the Poisonous Tree Revisited and Shepherdized. *California Law Review* 56(3): 579-651.

*Police Powers and Responsibilities Act 2000 (QLD).*

Reidenberg, J. R. (2005) Technology and Internet Jurisdiction. *University of Pennsylvania Law Review* 153(6): 1951-1974.

Safi, M. (2016) The takeover: how police ended up running a paedophile site. *The Guardian*, 13 July. Available at: <https://www.theguardian.com/society/2016/jul/13/shining-a-light-on-the-dark-web-how-the-police-ended-up-running-a-paedophile-site> (accessed 3 February 2018).

Shouplin, D. P. (1981) Preventing the Sexual Exploitation of Children: A Model Act. *Wake Forest Law Review* 17(4): 535-560.

Skolnick, J. H. (1982) Deception by Police. *Criminal Justice Ethics* 1(2): 40-54.

Tullis, R. and Ludlow, L. (1975) Admissibility of Evidence Seized in Another Jurisdiction: Choice of Law and the Exclusionary Rule. *University of San Francisco Law Review* 10(1): 67-91.

Tyler, R. P. and Stone, L. E. (1985) Child Pornography: Perpetuating the sexual victimisation of children. *Child Abuse & Neglect* 9(3): 313-318.

Uchida, C. D., Bynum, T. S., Rogan, D. and Murasky, D. (1988) Acting in Good Faith: The Effects of United States v. Leon on Police and the Courts. *Arizona Law Review* 30(3): 467-495.

Vendius, T. T. (2015) Proactive Undercover Policing and Sexual Crimes against Children on the Internet. *The European Review of Organised Crime* 2(2): 6-24.

Wells, M., Finkelhor, D., Wolak, J. and Mitchell, K. J. (2007) Defining Child Pornography: Law, Enforcement Dilemmas in Investigations of Internet Child Pornography Possession. *Police Practice and Research* 8(3): 269-282.