



Possession Of Extreme Pornography Consultation – Cyber-Rights.Org Response

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Cyber-Rights & Cyber-Liberties (UK) (<http://www.cyber-rights.org>) is a non profit organisation established to protect the interests of all honest, law-abiding Internet users with the aim of promoting free speech and privacy on the Internet. It was founded in January 1997 and has been actively involved with the Internet policy-making processes of the UK Government, the European Union, Council of Europe, OECD, and the United Nations. It has also been an active member of the Global Internet Liberty Campaign (<http://www.gilc.org>) since March 1997. The organisation also launched the Cyber-Rights.Net project (<http://www.cyber-rights.net>) in association with HushMail in November 2000.

(1) Do you think the challenge posed by the Internet in this area requires the law to be strengthened?

The making (production) and distribution of “extreme pornographic material” as described in the consultation paper is already illegal under the Obscene Publications Act 1959. The proposed measures will have no impact upon addressing this question or on the reduction of such content on the Internet. This type of content will continue to be available from outside the UK jurisdiction. The attention of the government should be directed at the resources available to law enforcement agencies and also their efficiency and effectiveness. The legal framework should not be used as an excuse for deficiencies in those respects.

(2) In the absence of conclusive research results as to its possible negative effects, do you think that there is some pornographic material which is so degrading, violent or aberrant that it should not be tolerated?

As the Consultation Paper admits, there is no “direct established link” between the consumption (possession) of “extreme pornographic material” and the commission of “sexual offences” (harm). It should be recalled that in 1990, a Home Office research conducted by Howitt and Cumberbatch relating to pornography concluded that there was no evidence of any casual links between pornography and sexual violence (see Howitt, D., & Cumberbatch, G., *Pornography: Impacts and Influences*, HMSO, 1990). Howitt & Cumberbatch’s research concluded that pornography’s contribution to the development of pathological or criminal sexuality is far from clear (p. 83). The said “it is important to distinguish between the use of pornography by ‘deviant’ persons and the effects of pornography in creating that deviancy.” (p. 83). There is no evidence to suggest that there has been any changes to Howitt &

Cumberbatch's research conclusions. Similar conclusions were reached back in 1970 when the US Commission on Obscenity and Pornography concluded that the findings of empirical research on the effects of pornography were insufficient to establish that pornography is a central causal factor in acts of sexual violence (see United States Commission Report on Obscenity and Pornography, 1970). The findings of the Williams Committee in 1979 within the UK were also similar (see Williams Committee Report - "Obscenity and Film Censorship", HMSO, 1979). Jane Longhurst case is sad and unfortunate but should this trigger legislative action? The answer is no as "the evidence does not point to pornography as a cause of deviant sexual orientation in offenders. Rather it seems to be used as part of that deviant sexual orientation." (Howitt & Cumberbatch, p 94)

According to Howitt & Cumberbatch "it is also a distortion of history to believe that there is anything peculiarly modern about the maltreatment of women and children in the form of physical abuse, sexual abuse, or sexually violent attacks. However, some authors urge us to believe that things are different now because of sexually violent pornography." (p. 95)

As Howitt & Cumberbatch argue "if it is so easy to produce in the way people think and act through pornography, it may be just as easy through literature, media, and education to create the conditions which effectively undermine pornography." (p. 96) So no account is taken of other sources of violence in society e.g. Peter Sutcliffe acted on the basis of the Book of Revelations, with far more serious results than Graham Coutts. Should we consider banning the Bible which has been cited as the justification for wars as well as individual crimes? As stated by the US Supreme Court, the "State may no more prohibit mere possession of obscene matter on the ground that it may lead to antisocial conduct than it may prohibit possession of chemistry books on the ground that they may lead to the manufacture of homemade spirits." (*Stanley v. Georgia*, (1969) 394 U.S. 557)

Moreover, contrary to what the Home Office Consultation Paper states, the position regarding violent pornography is clearly distinguishable from the justifications used to criminalise the possession of child pornography where the making/creation almost certainly involves the commission of offences (direct harm to children and assuming it is not computer generated images). The government's compelling interest in protecting the physical and psychological well-being of children and in destroying the market for the exploitative use of children by criminalising possession of child pornography is well justified. However, in terms of the subject matter of the consultation paper, the content in question (extreme pornography) may involve commercially and legally produced consensual activity and/or simulated activity, and the government does not have a compelling interest in criminalising such content as in the case of child pornography. A decision to criminalise the possession of extreme violent pornography is based solely on moral and political grounds rather than on public safety. Private morality has not been seen as a proper field for government meddling since the time of the Wolfenden Report (*Report of the Departmental Committee on Homosexual Offences and Prostitution*, 1957), and that position was reiterated by the Williams Report in 1979 (Williams Committee Report - "Obscenity and Film Censorship", HMSO, 1979). Aside from the reasons given in those reports, the government should respect the growing diversity in society and the fact that there are wide differences in moral outlook and practices. So long as they do not cause proven harm to others, the government should not interfere.

Content of Material - 3. Do you agree with the list of material set out?

The inclusion of content involving "realistic depictions" or "consensual actual scenes" of i) intercourse or oral sex with an animal; ii) sexual interference with a human corpse; iii) serious violence in a sexual context, and iv) serious sexual violence is problematic in the absence of a proven link between the consumption (possession) of "extreme pornographic

material” and the commission of “sexual offences” (harm) as mentioned above. We do not agree that the possession of content involving “realistic depictions” or “consensual actual scenes” should be criminalised.

4. Do you believe there is any justification for being in possession of such material?

Pornography is often regarded within the concept of free speech as a value because it may contain ideas, and may be fulfilling especially for consulting adults in their private lives in ways which do not cause harms to others. Content which is deemed as extreme, violent, disgusting, shocking, offensive, or harmful by one person may be another’s pornography. Such content may include simulated and/or consensual activity depicting violent sexual content. Free speech has at times been suggested to be a good in itself, without need of further justification. Self-fulfilment is for each individual to conceive for himself and each can decide what is good life for themselves. Free speech may be a necessary component to achieve that good life, so governments should be required to give people the chance of self-fulfilment as long as they do not harm others. In the absence of a proven link between possession and harm to others this question implies that obscene and extreme content would “poison the minds of its viewers.” (*Stanley v. Georgia*, (1969) 394 U.S. 557, US Supreme Court judgment). But that is far from proven to be the case.

5. Which option do you prefer? (Please tick one only)

6. Why do you think this option is best?

We believe that options one and two (adding a general and/or limited offence of possession of “obscene” material to the Obscene Publications Act 1959) should be avoided at all costs. For the reasons set out in this paper we also believe option three (a new free standing offence) should be avoided. We believe the best option is “to do nothing” (option four). The consultation paper argues that “*Option four*, doing nothing, would risk sending a message that we considered accessing such material was harmless, or not worthy of attention.” This is not necessarily true and a good regulatory action should avoid impetuous knee-jerk reaction to media and public pressure (note the Cabinet Office Regulatory Impact Unit’s *Principles of Good Regulation*) in the absence of a proven link between possession of extreme violent pornography and sexual crimes. The Consultation Paper itself recognise that “accessing such material does not necessarily cause criminal activity,” but goes on to justify the proposals on moral grounds. The government should not prohibit mere possession of obscene and extreme content on moral grounds or the ground that it may lead to harm.

Penalties 7. Which penalty option do you prefer (please tick one only) ?

So far we argued strongly against the criminalisation of possession of extreme violent pornography. So we do not have a preferred option in terms of the proposed penalties. However, it should be noted that possession of “realistic depictions” of “extreme pornographic material” is problematic. It is not acceptable that one person could be imprisoned for up to 3 years imprisonment for having in possession a sexually explicit image of somebody looking dead (realistic depiction) but not really dead. In such a scenario involving pseudo- necrophilia there is no harm in the production or consumption of such content. Within this context justifications used to criminalise indecent pseudo-photographs of children are not comparable to realistic depictions of extreme violent pornography. Although there is no direct harm to children in the production of computer generated images or indecent pseudo-photographs as long as no real children are used for such production, there are other considerations that support the criminalisation of indecent pseudo-photographs of children. There is evidence to support that photographs of children engaged in sexual activity are used as tools for “grooming” children into child pornography and sexual activity and it is argued that

photographs or pseudo-photographs will be used interchangeably for this purpose. So the justification for criminalising indecent pseudo-photographs of children is that the pictures may be associated with a danger that is distinct from the harms related to the original making of a picture.

We also believe that possession of "extreme pornographic material" containing "consensual acts" is also problematic. Therefore, the proposed penalties which do not differentiate between real and non real images is disproportionate.

Please use the space below to make any comments on any aspect of the Partial Regulatory Impact Assessment

No comments.

Conclusion

As the Home Office proposals include "realistic depictions" and "consensual acts" in relation to violent extreme pornography, we are also concerned about the collateral impact and damage that may be witnessed. First of all, prosecutions and detection of these crimes will be harder. The priority of the law enforcement bodies should remain as the detection, and prosecution of crimes involving the production, distribution, and possession of child pornography. Secondly, the proposed provisions will not act as a deterrent and there will be contested cases (compared to child pornography prosecutions) and juries will have difficulty deciding what should be regarded as violent extreme pornography. Finally, if criminalised hotlines like the Internet Watch Foundation will make the "judgment call" on what is "presumed illegal" and this type of content will be filtered by the UK Internet Service Providers (ISPs). The UK ISPs should not be forced to "remove content" from their servers or block access to foreign servers in the absence of a court decision in terms of what constitutes as illegal content.

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