

POSSESSION OF EXTREME PORNOGRAPHY – CONSULTATION RESPONSE

Thank you for taking time to read the consultation paper and to complete this questionnaire. The information you provide will be attributed to you and/or your organisation and made publicly available unless you specifically indicate that you want your response to be treated confidentially.

Would you like this response to be kept confidential? No

Section A - About You

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Date: 2nd December 2005

Are you replying on behalf of an organisation? Yes

Section B – Your Organisation (if applicable)

Name of your organisation: Rights of Women

Is your organisation a:

Registered Body: Yes (please see below).

Umbrella Body:

Other (Please Specify):

Rights of Women is an Industrial and Provident society, which was founded in 1975 to promote the interests of women in relation to the law. We run a free, national confidential telephone legal advice help line for women. We specialise in advising in family law, especially domestic violence and Children Act matters. Rights of Women works to attain justice and equality by informing, educating and empowering women on their legal rights. We are a membership organisation and our activities include producing publications, organising conferences and training courses, undertaking policy and research work, and running a national confidential telephone legal advice line for women, specialising in family law issues, including domestic violence.

What is your position in this organisation? Director

Section C Consultation questions

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

YES

It is imperative that the law responds to technological developments in order to remedy the current lacuna in the law which criminalises publication and distribution but not possession and therefore presents a gap which is particularly worrying in the context of the Internet.

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?

YES

Whilst we appreciate that there are issues of free speech and freedom of sexual expression involved in the regulation of pornography, such rights are not absolute and what is at issue here is material which is degrading, violent or aberrant. From a feminist perspective, such materials not only perpetrate gender inequalities but worsen them through the objectification of women and the normalisation of sexualised violence. Irrespective of the lack of evidence demonstrating a proven causal link between extreme pornography and sexual violence, and the ostensible consent of the participants; it is our belief that the degradation of women in these extreme materials is underpinned by the gendered nature of power relations and such sexualised representations worsen the continued subordination of women. Further, the violence women in such pornography are subjected to merits governmental action. In addition, whilst there are no conclusive empirical studies on causation, there have certainly been cases where men who have subjected women to extreme sexual violence and subsequently murdered their victims have done so following the accessing (and thus electronic possession) of extreme pornographic materials, as for example the murder of Jane Longhurst in 2003.

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

YES

We agree with the list of materials set out in paragraph 39, namely the creation of an offence of explicit pornography containing actual scenes or realistic depictions 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.

We also note the government's clarification of what is meant by the terms 'serious violence' and 'serious sexual violence'. However, we regret that the government has not included more information on how it intends to formulate the offence, beyond articulation of the materials to be included. It is our view that the government should, in determining the actual formulation of the offence, make it clear that what is being criminalised is the degradation, humiliation and violence that those involved in extreme pornography are subject to. In this regard, our primary concern is for the protection of women, both subjected to the actual practices, and more generally at a societal level. The criminalisation of extreme pornography should not be separated from the context of degradation and violence.

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

material?

Whilst, in theory, we believe that possession of extreme pornographic material should be criminalised, we do have concerns as to how this would be implemented in practice. In particular, we seek clarification of the position under the proposed offence of those who receive such materials by accident and/or without their consent. Whilst we note that the government does not intend the proposed offence to capture such persons (paragraph 7), we remain concerned at how the distinction between accidental or non-consensual and deliberate possession will be determined in reality. This is particularly important given the context of “electronic” possession, as accidental or non-consensual receipt of extreme pornographic materials on a computer (e.g. via email or unintended internet searches or usage) will leave a permanent “electronic fingerprint” of such materials on the computer’s hard-drive, irrespective of the individual’s deletion upon discovery of the materials. Thus, just as this consultation has been pre-empted by technological advances, any resultant offence must also appreciate the nuances of such advances and ensure that accidental or non-consensual possession is not included within the ambit of the crime. In this regard we would advocate the incorporation of a provision similar to section 160(2) of the Criminal Justice Act 1988, which deals with child possession of child pornography; with additional protections for the instances outlined.

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

OPTION 3

Having noted the practical implications of incorporating the proposed offence into the current legislation (the Obscene Publications Act 1959 and the Civic Government (Scotland) Act 1982) we support the enactment of a new free-standing offence criminalising the possession of extreme pornography.

6. Why do you think this option is best?

We support the creation of a free-standing offence as we believe that the incorporation of a possession offence into existing legislation would result in those Acts containing a patchwork of various offences with varying thresholds, and thus is likely to lead to confusion. The creation of a free-standing offence allows the government to specifically tailor the offence, rather than seeking to make it fit within the confines of an existing Act which was not originally intended to address an offence of possession. In addition, a stand alone offence should avoid the lack of clarity among actors in the criminal justice system which could result from seeking to insert the offence into the current legislation.

Penalties

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

- a) maximum penalty for possession of less than 3 years.**
- b) maximum penalty for possession of 3 years and increase maximum penalties under the OPA and CG(S)A to 5 years**

Given that the possession of child pornography carries a maximum penalty of five years imprisonment, we advocate the same maximum penalty for the possession of extreme pornography as we do not agree with the imposition of a hierarchy of abuse. We note that this would lead to inconsistencies in the following areas. Firstly, under the OPA and CG(S)A the maximum penalty for distribution and publication is only three years. Thus

the imposition of a five penalty for possession would create an inconsistency of penalties with a lower penalty for distribution/publication than for possession. Secondly, the current maximum penalty for bestiality and necrophilia in England and Wales is two years imprisonment; thus the five year penalty for possession would be inconsistent with a two year penalty for actually carrying out the act. Rather than remedying these inconsistencies by lowering the penalty for possession, we would argue that the penalties for publication/distribution, bestiality and necrophilia should be raised.

Partial Regulatory Impact Assessment

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

We note that the government has not fully addressed the issue of shared use of computers in the Partial Regulatory Impact Assessment. This is an area which warrants consideration given that many people may share computers both in their personal lives (through shared house computers) and at work (for example in the context of hot-desking). In addition, we note that there is no mention of liability where extreme pornography has been “possessed” (i.e. accessed and stored) on a computer located in an internet café or through the wireless access provided by other similar establishments. This also raises the issue of liability in the context of an individual “piggy backing” another person’s wireless internet connection. We urge the government to seriously consider these issues.

Return your responses, by 2 December 2005 to:

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