

Response No 77

Fraser R (Ronnie)

From: David Witts [REDACTED]
Sent: 02 December 2005 09:59
To: Extreme Pornography; CLPUconsultations@homeoffice.gsi.gov.uk
Subject: Response to consultation on the possession of extreme pornographic material (personal response; David Witts)

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Dear Sir/Madam,

Find attached my response to this consultation document on the pro-forma Word document provided. I would welcome further contact to discuss any issue points arising from my response, or from the wider consultative and legislative process regarding the proposed legislation.

Please could you acknowledge receipt of this email/attachment, especially given that the deadline date is today.

Many thanks,
David.

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CONSULTATION ON THE POSSESSION OF EXTREME PORNOGRAPHIC MATERIAL

RESPONSE FORM

The consultation asks for views on whether the possession of extreme pornography should be made unlawful.

Current Legislation (Page 7)

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

No. As such, the internet/WWW is merely one channel for distribution of media.

In the context of the stated aims of this legislation, placing too much emphasis on one distribution channel might only create further "problems" with other, less easily trackable, channels (traditional film/video and writable computer media, for example).

Evidence of Harm (Page 9)

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?

Existing legislation covering still images (including pseudo-photographs) and video footage of child abuse via various media, including electronic format and transmission, suffice to cover those unique circumstances.

In such cases, there is a clear-cut and common sense presumption that the victim is a non-adult who cannot (fully) understand the context of, and will have to live with any physical and emotional consequences arising from, having been a subject in such material once they reach adulthood.

Beyond the above, trying to draw a legislative "line in the sand" is fraught with difficulty and liable to cause as much, if not more, damage to individuals and society than any potential benefits that may arise.

It is worthwhile noting that in decades past, without any evidence of "conclusive research results as to possible negative effects", people have been given custodial sentences for cases relating to pornographic material that is now commonplace in the UK.

Similarly, custodial sentences have been handed down for expression of sexual behaviours that are now deemed to be "acceptable", even if those are still not "tolerated" by many members of the UK populace on a personal basis.

Appreciation of (and politely tolerating) such intolerances is one matter in a civil society. Following suit and reflecting those intolerances without hard evidence of causal links and how these apply to individuals involved to create "negative effects" or "harm" to others is entirely another matter.

Content of Material (Page 11)

3. Do you agree with the list of material set out in paragraph 39?

No.

The stated definition of “extreme” pornographic material in this consultation paper re. proposed legislation is “material that is violent and abusive” (foreward), “does not depict consensual sexual activity”, but shows “suffering, pain, torture and degradation” of a severe kind (Annex C 1(ii)).

With relation to the stated list of material in para. 39:

i) intercourse or oral sex with an animal

- Such material has the potential to be non-violent, non-abusive and consensual (certainly to a greater degree than killing said animal for food may be considered “consensual” and acceptable by some people). The test of “degradation” alone does not seem to merit the inclusion of all such material within the scope of “violent pornographic material” that appears to be the aim of the proposed legislation. Other sexual behaviors that are legal and not included on this list are also considered to be “degrading” or “have a tendency to deprave” by a large percentage, if not the majority, of the population.

Depictions of actual violence or cruelty towards animals (in a sexual context) would seem to be closer to that core focus.

In addition, the scope of material listed in “i)” does not match the definition of bestiality in the Sexual Offences Act 2003 (England & Wales). “Oral sex with an animal” is an inclusion that I have only previously seen on the “wish list” for legal inclusion from various Animal Rights and Animal Protection groups, but currently has no legal standing as far as I am aware.

ii) sexual interference with a human corpse;

- Degradation from the participants point of view would again appear to be main sustainable argument as most of the other factors that have been deemed defining aspects of “extreme” pornographic material would be lacking (or have the potential to be lacking) in this case.

It may be impossible to determine whether a given scene is a “realistic depiction” or not and, again, this definition would appear to be broader than the current Sexual Offences Act 2003 (England & Wales) as that does not define “sexual interference” in this context.

iii) serious violence in a sexual context, and

iv) serious sexual violence.

- If “realistic depictions of” these are to be included, scenes in existing mainstream media where there are depictions of both as part of a narrative would be deemed illegal, even where no physical harm has occurred. For “serious violence” it may not prove possible to provide a hard-and-fast legal decision on what side of the line much material falls, or what constitutes a “realistic depiction” to a given viewer. As it currently stands, there would appear to be the potential for a legal quagmire that is totally disproportionate to the possible benefits of removing such material as has not proven to have any “negative effects” on behaviors demonstrated by the viewer.

It is not sufficient, in my opinion, to use one particular case (Graham Coutts, for example) as justification for such legislation, especially where the list of material to be excluded appears neither to fit the stated scope nor have any conclusive research results as to “negative effects” on the viewer.

Additionally, I do not understand why the focus is purely on “material that has been solely or primarily produced for the purpose of sexual arousal” (section 37).

Not only does this add further confusion to i) through iv) above, but it misses the fact that fixation on sexual fantasies arising from other violent images, videos (or indeed, other media forms) that do not have any primary sexual content are just as likely to be key in such cases as that of Graham Coutts.

Given the level of violence and violence with sexualised overtones (but not primarily produced for sexual arousal) available freely in various (mainstream) media, this should be cause for consideration at least.

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

Yes. A case may be made for such, in particular circumstances.

For example, “realistic” depictions that are included within the narrative of a mainstream presentation that may, in future, be deemed to be illegal within the scope of this legislation.

In addition, I believe that there are dangers inherent in excessively severe measures that may actually cause exactly the sort of “aberrant” behaviours that this legislation is notionally designed to prevent in the first place; not that these, save in a tiny number of cases, actually “lead” to a Graham Coutts-type scenario.

For example, in the process of exploring their sexuality, an individual may have developed a curiosity about bestiality and have obtained media from a country or state where this is legal, depicting non-abusive acts at a level of consent that is at least as high as in many farm-industry situations or in the “wild” regarding reproductive behavior.

For this individual to be able to evaluate what might easily be a short-term curiosity and, even better, be able to openly discuss such matters with people who could provide expert opinion might be considered a positive phase in their sexual development.

However, to prosecute and hand down a criminal conviction to such an individual in addition to the social stigma and personal trauma arising therefrom would result in a personal and societal harm totally disproportionate to any perceived “benefits”.

Also, since possession of such material would be known to be illegal, this might drive such thoughts/desires “underground” and could easily lead directly to participation in such acts which are illegal in the UK, yet are relatively difficult to detect compared with the process of obtaining depictions of such.

Options (Page 12)

5. Which option for do you prefer?

Option Four. Do nothing.

I object somewhat to the directive, if not bullying, language in the consultation text, that this option “would risk sending a message that we considered accessing such material was harmless, or not worthy of attention. But although we recognise that accessing such material does not necessarily cause criminal activity, we consider the moral and public protection case against allowing this kind of material sufficiently strong to make this option unattractive”.

If this is a consultation, consult; please do not direct.

A preferred option – not listed – would be to carry out wide-ranging, open-minded and inclusive research on cause-and-effect behaviours arising from all forms of media in order to determine the scope for any actual benefits in restricting particular classes of such from individuals who demonstrate clearly negative behaviours towards third parties.

In my opinion, this should be public safety focused, rather than show “excessive” concern towards the interests of a given individual (especially where no third party is actually harmed) as otherwise this may open the floodgates to demands for further restrictions arising from personal bias and intolerance of other’s behaviours.

To this end, however, material considered would require full and individual assessment rather than the current hodgepodge of lumping together of disparate content, as well as “realistic depictions” of such, yet totally misses out on the potential for sexualised behaviours/fixations on material that is violent albeit not actually “produced for the purpose of sexual arousal”.

Some depictions of actual violence may be deemed necessary of prohibition, but the list presented in the consultation document and the inclusion of “realistic depictions” muddy the waters so much that a “clean slate” is required for realistic and level-headed consideration of the issues.

I can see no indication that anyone who has been involved in the drawing up of this consultation on possible legislation is an “expert” on this subject matter; a matter which would have been of considerable reassurance and permitted direct questioning.

Working in the Criminal Justice field myself, I would wish to add that to carry out a proper job, focusing on cases of actual harm and all matters relating to child abuse, is already in many cases pushing scant resources to their limits.

6. Why do you think this option is the best?

For lack of any “better” option under the circumstances discussed above, Option Four. Do nothing.

I strongly suspect that the authors of this consultation document have not made any attempts to determine the numbers of individuals who might be prosecuted under this legislation.

From a Criminal Justice perspective, the following quote is extremely worrying in that context; “It is believed that, in view of the nature of this material there would only be a small number of proceedings and the cost would be ‘de minimus’”. (Annex C, Section 4, Option 3; “Costs”)

If the first and third classes of material alone are considered (especially if “realistic depictions” are also included), it is my opinion that the number of people liable to prosecution in the UK is likely to number in excess of 100,000.

I do not realistically believe that the Criminal Justice system could cope with this and, if anything, is likely to end up prosecuting/criminalizing a small number of those people who are not “hiding” rather than those who are deliberately doing so, due to “darker secrets” of a nature that may be of far greater concern to society as a whole.

Penalties (Page 14)

7. Which penalty option do you prefer?

Not applicable, in the context of Option 4, above.

However, if another Option is to be chosen, none of the penalty options provided appear to be suitable as the focus is on “maximum sentence” rather than the need to recognise and, where appropriate, challenge underlying behavioural issues and reasons for possession of such material.

A more appropriate response to possession might be to evaluate the behaviours evidenced by such individuals and where there is clear, strong evidence that the material is creating influences which are likely to result in harm other individuals, or (possibly) where the material depicts actual violence, it may be considered necessary to impose an order equivalent to the civil preventative “Risk of Sexual Harm Order” in the Protection of Children and Prevention of Sexual Offences (Scotland) Bill.