

Response to the Criminal Justice and Courts Bill

1. Submitted on behalf of the *Sex & Censorship* campaign.

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Summary

4. This is a response from *Sex & Censorship*, a campaigning body, to the 'non-consensual pornography' provisions (Clause 16) in the Criminal Justice and Courts Bill.

5. *Sex & Censorship* was set up in 2013 by Jerry Barnett, in response to growing concerns over the censorship and repression of sexual expression in the United Kingdom. Jerry has been an advocate for free speech and sexual freedom for a number of years. We are a non-profit organisation that aims to counter moral panics in the media and campaign for policy-making that is evidence-based and not driven by moral agendas.

6. Clause 16 is an amendment to the existing 'extreme porn' law that was introduced in section 63 of the the Criminal Justice and Immigration Act 2008. We believe that the original law does not serve the public interest, and is draconian, and that this new amendment will make it worse, and should be removed. In outline, our objections are as follows:

- ◆ The proposed law results from a moral panic over 'rape porn' rather than any evidence of harm.
- ◆ Although headlined as 'rape porn', the wording of the law would criminalise consenting (but perhaps non-standard) sexual activity.
- ◆ The law blurs the distinction between consensual and nonconsensual sex, and so may hinder, rather than help, attempts to reduce sexual violence.
- ◆ There has been no evidence presented that viewers of the content in question may be driven to commit sexual violence as a result of viewing it.
- ◆ Conversely, there is evidence that such content may serve as an outlet for people who are prone to sexual violence and may reduce rather than increase their likelihood to commit harm.
- ◆ In general, possession laws are draconian as they place an impossible burden of legal and technical knowledge on members of the public.
- ◆ Censorship itself is harmful to free expression. Censorship laws should, therefore, only be introduced in response to compelling evidence of harm rather than on the basis of moral values alone.

The Law Results From a Moral Panic Rather Than Evidence of Harm

7. The term 'rape porn' appears to have become popularised by the mass media and anti-pornography campaigners in the run-up to the government announcement of the new law in July 2013.
8. 'Rape porn' does not exist: the term appears to be an attempt to raise unwarranted fear among the general public, and to blur the line between the crime of rape and consensual adult sexual behaviour. In the sexual fetish community, this form of activity - in which non-consensual acts are roleplayed - is referred to as 'consensual non-consent', not 'rape porn'.

The Law Would Criminalise Consenting Sexual Activity

9. 'Rape porn' does not feature rape, but rather, shows scenarios in which non-consensual behaviour is acted out. There is a huge range of such sexual activity, from bondage to light slapping, to a wide variety of submissive/dominant roleplay scenarios. To criminalise the depiction of such activity is to stigmatise the activity itself. We do not believe that the state belongs in the bedrooms, or the fantasies, of consenting adults.

The Law Blurs the Line Between Rape and Consensual Sex

10. It is clearly understood among anti-rape campaigners that, in order to reduce rates of sexual violence, young people - especially young men - must be educated about the importance of consent in all matters. Yet this law appears to deliberately blur the line between a consensual act and a non-consensual one. The most aggressive act, when carried out with the full consent of participants, is not rape; and the most gentle sexual act, if carried out against a participant's will, is still rape. This law confuses this simple anti-rape message.

The Government Has Not Presented Any Evidence of Harm

11. It is notable that, amidst the emotive language used to introduce this law, no evidence has been presented that the material in question leads to anybody committing harm. There is a simple reason for this: as far as we know, there is no such evidence available. We are concerned that the state is prepared to introduce a harsh censorship measure without first requiring such evidence to be presented.
12. Instead, we have been repeatedly told that people prone to sexual violence are more likely to watch material featuring sexual violence. This is true; but it is very important, as ever, to note that *correlation does not equate to causation*. The fact that people prone to violence are also more likely to consume violent entertainment has long been documented, and should not surprise anyone. However, the reverse claim - that violent entertainment *causes* people to be violent - is a very different one, and lacks evidence to back it. Similar claims have often been made against horror films, violent computer games, and other forms of entertainment - all without evidence to back them.

Conversely, There is Evidence that Viewing Such Material May Reduce Sexual

Violence

13. (This section is provided by Dr David Ley, a specialist in sexual psychology and author on the subject).
14. According to the best research available to date, exposure to pornography is only linked to increased rates of sexual violence in those individuals who already have a predisposition towards violence. Men who gravitate toward violent images in pornography are men who are already disposed toward violence and aggression. Research has shown that the effects of aggressive images in pornography upon viewers can be nullified when the viewers are in an inhibiting social environment and where the viewers understand the negative and damaging effects of these aggressive images.
15. Thus, what is needed are efforts to address the tendencies in societies to encourage and allow violent tendencies to go unchecked, unchallenged, and unaddressed until it is too late. (N. Malamuth, T. Addison, and M. Koss, "Pornography and Sexual Aggression: Are There Reliable Effects and Can We Understand Them?" *Annual Review of Sex Research* 11 (2000): 26–91.) It is extremely unlikely that restriction of access to pornography will have a suppressive effect on rates of sex crime or rape.
16. Instead, research suggests just the opposite. Consistently, international research has documented that the rates of sexual violence and crimes correlate in a negative fashion with a society's access to pornography. In countries and states with increased access to pornography, rates of sexual violence diminish. When countries have increased restrictions on access to pornography, these countries have experienced concomitant increases in sexual crimes. It is noteworthy that this effect appears most significant in juvenile offenders, suggesting that such increased access to pornography has disproportionate positive effect in reducing rates of sex crimes by juveniles. (Pornography, Rape and Sex Crimes in Japan Author: Milton Diamond, Ph.D. and Ayako Uchiyama. Published: *International Journal of Law and Psychiatry* 22(1): 1-22. 1999; Pornography, Public Acceptance and Sex Related Crime: A Review. Author: Milton Diamond Published in: *International Journal of Law and Psychiatry* 32 (2009) 304-314; corrected with Corrigendum IJLP 33 (2010) 197-199)
17. Porn exposure in kids doesn't have a life-altering, warping effect on children. In fact, recent [research](#) in the Netherlands showed that exposure to pornography explained less than 1% of the variance in adolescents behavior. This means that 99% of the reasons why these kids do the things they do have nothing to do with the fact that they view pornography, and are far more connected to other life variables, such as poverty, education, etc. From the hyperbole and [panic](#) that we all hear on a regular basis, we are paying a lot more attention to porn than it deserves. ([Hald GM](#)¹, [Kuyper L](#), [Adam PC](#), [de Wit JB](#). *J Sex Med*. 2013 Dec;10(12):2986-95. doi: 10.1111/jsm.12157. Epub 2013 Apr 26. Does viewing explain doing? Assessing the association between sexually explicit materials use and sexual behaviors in a large sample of Dutch adolescents and young adults.)

18. Research findings about the effects of non-pornographic depictions of rape or sexual assault are less clear, for a variety of complex reasons. First, as with the existing research on pornography, research on the effects of violence in the media are confounded by significant moral and social values. Further, the role of media exposure is difficult to separate from predisposing variables including social context, socioeconomic status, education levels, etc. Finally, the prevalence of fantasies of rape in the general population are quite high, confounding studies about the effects of media on this phenomenon.
19. Sexual fantasy about rape is exceedingly common among women, with as many as 25 to 65 percent of women endorsing some form of this fantasy, at least once in their lives, in one form or another. One study of female college students found that 65 percent of them acknowledged a fantasy of being forced in sex. (26. J. Bivona and J. Critelli, "The Nature of Women's Rape Fantasies: An Analysis of Prevalence, Frequency, and Contents," *Journal of Sex Research* 46 (2009): 33.) The prevalence of the fantasy of rape among women and men who have never experienced such events suggests that the rape fantasy probably occurs independent of a traumatic event.
20. Further, research by British psychotherapist Brett Kahr (Kahr, 2008. *Who's Been Sleeping in Your Head?* (New York: Basic Books)) suggests that fantasies of rape and violence are quite prevalent, and do not indicate levels of risk, or mental disturbance. Instead, Kahr, and many others, suggest that such fantasies allow for individuals to explore different aspects of their personalities, emotions, and to potentially resolve such fantasies or desires in nonviolent, noncriminal means.
21. Prohibition of material depicting sexual violence and rape is unlikely to result in a decrease of occurrence or fantasies of such acts. Instead, it is probable that such prohibition may in fact increase the likelihood of these criminal acts. Such depictions in media material offer individuals an ability to explore this fantasy, and in many cases, to masturbate to it, and "experience" this fantasy and sexual satisfaction in a private, noncriminal means. While it seems intuitively sensical that such fantasy-masturbation-orgasm pairings might increase the likelihood of the individual engaging in these behaviors in "real life," there is no evidence to support this, and a great deal of evidence that the contrary is true.
22. Finally, as described above, many women (and men) experience normative fantasies of being raped. Prohibition of such media materials is likely to unfairly punish and stigmatize these individuals, as well as those individuals who have been victims of rape or sexual violence. Both groups may commonly use such materials in intentional and unconscious ways to resolve their internal emotional reactions to their experiences and fantasies.

Content Possession Laws are Draconian

23. The existing 'extreme porn' law (section 63) is already vague and open to interpretation. The new amendment will make it far more so. It will undoubtedly be difficult for police, prosecutors and juries to decide whether an image '...portrays, in an explicit and realistic way, an act which

involves the non-consensual penetration of a person's vagina, anus or mouth...'. So we believe that for a layperson to decide whether an image breaches the law is unreasonable.

24. How does an untrained viewer determine whether an image is non-consensual, or portrays such an act? Given that most sex acts can be carried out either consensually or non-consensually, this would seem an impossible decision to make accurately. Does the existence of restraint or a gag mean the act is deemed to be non-consensual? Does one rely on whether the model is smiling or not? We believe that this category of imagery is far too subjective to be left to a layperson to make these decisions.
25. The concept of possession goes far further than many people understand. Simply visiting a web page means that images are automatically cached on the user's computer, which then (in the eyes of the law) indicates possession. If a person visits a web page containing many sexual images (which is not unusual), and any one of those images is deemed to portray a non-consensual act, the person will be deemed to be in possession of 'rape porn', even if they have never seen the image before.
26. This 'crime' may occur without even the knowledge of the 'criminal'! This makes it a deeply draconian law, and risks criminalising many citizens, who would not knowingly break the law otherwise. People will be criminalised simply for seeking out legal pornography online; we suspect that this is not entirely an accidental by-product of the law.

Censorship Itself is Harmful

27. A law such as this one undoubtedly would be unconstitutional under the First Amendment of the United States Constitution, and in any other nation that has strong defence of free expression. Sadly, the United Kingdom, which once prided itself as a global leader on free expression has no such protection, save for Parliament itself. To our knowledge, no other country has seen the need to take such a drastic step as criminalising the possession of this category of pornography.
28. We would like to remind members of Parliament why previous generations have often rejected censorship, even of material that may be unpleasant, tasteless or offensive: censorship itself is harmful, and is incompatible with democratic values. Therefore, censorship should be seen as a last resort, and only in response to compelling evidence. As we have pointed out, there is no evidence at all that the content under discussion is harmful. We therefore strongly believe that this law is not only unnecessary, but represents a step backward from liberty, and certainly not the first in recent years. We call on MPs to reject this clause, which protects nobody, but further empowers police and prosecutors, who already have plenty of existing tools with which to tackle the very real problem of sexual violence.