



Ministry of JUSTICE

Criminal Law and Legal Policy Unit
102 Petty France
London
SW1H 9AJ

T: 020 3334 3555
F: 020 3334 4455
E: general.queries@justice.gsi.gov.uk

www.justice.gov.uk

Mr E Goodman
Campaign Against Censorship
PO Box 570
Redhill
RH1 2WZ

24 October 2012

Our ref: TO12/5590

Dear Mr Goodman

Thank you for your letter of 16 September 2012 to the Secretary of State for Culture, Media, and Sport in which you call for reform of the law relating to extreme pornography. Your letter has been passed to me at the Ministry of Justice as senior policy advisor with interest in the law on pornography and obscenity.

It may be helpful if I set out the background to the extreme pornography offence and its structure.

It was never the intention that the offence should cover material which it is not already unlawful to publish here under the Obscene Publications Act 1959 or limit private sexual activity. Its target is material which is already an offence to publish or distribute under the OPA, the vast majority of which is hosted abroad beyond our jurisdiction, and can be accessed via the Internet. Our controls on obscene material were being circumvented by technological developments and it was decided to act to close the gap which had emerged.

The focus of the offence is on the images themselves and the impact they may have on those who view them. Once an image is created it has endless potential for circulation, particularly via the Internet, and for having an effect on others not involved in its creation.

The offence targets only the most extreme material, images that would already be illegal to publish under the Obscene Publications Act 1959. To meet the terms of the offence an image must meet a series of "tests".

First the material must be "pornographic", that is, it must be of such a nature that it must reasonably be assumed to have been produced solely or principally for the purposes of sexual arousal. This would be an objective test for the jury and should rule out a lot of material such as genuine educational material.

Second, it must contain extreme images which portray in an explicit and realistic way one or more of the acts listed below:

- an act which threatens a person's life; this could include depictions of hanging, suffocation, or sexual assault involving a threat with a weapon
- an act which results in, or is likely to result in, serious injury to a person's anus, breasts or genitals; this could include the insertion of sharp objects or the mutilation of breasts or genitals
- an act which involves sexual interference with a human corpse
- a person performing an act of intercourse or oral sex with an animal.

In all cases the person or animal depicted in the image must be such that a reasonable person looking at the image would think they were real. This is a high threshold.

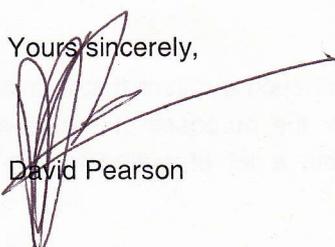
Finally the material must meet a test of being grossly offensive, disgusting, or otherwise of an obscene character. These three tests when taken together should ensure that the new offence only catches material which it is already an offence to publish under the Obscene Publications Act (OPA) 1959. Further, in recognition of the sensitivity of this area of the law, the consent of the Director of Public Prosecutions is required before a prosecution can be brought.

These elements, taken together, should capture only the sort of material which raised most concern ensuring the offence does not impact on people's freedom to possess legally available material. In addition there is a defence in respect of the first three categories of material listed above (except, in relation to the third, where the image depicts a real corpse) which applies where a defendant proves that he or she was a direct participant in the act depicted in the image, and that no harm was caused to any participant, or if harm were caused, it was harm which was and could be lawfully consented to. Thus the offence does not criminalise consensual activity performed in private or affect the threshold of harm which it is lawful to consent to.

As you may be aware, the Government conducted an exercise inviting the public to tell us which laws, and particularly which offences, they would like to see repealed on the YourFreedom website. The website, which received over 15,000 suggestions, has closed, but, a number of similar comments to yours relating to the prohibition on possessing extreme pornography were received. We can assure you that the Government considered carefully those views as part of our review of existing criminal offences, in the light of this Government's wider commitment to ensure that behaviour is not criminalised unnecessarily. However, as explained above, as the offence is tightly drawn to apply only to the most extreme material we decided not to repeal this offence.

I note your comments about the number of prosecutions for this offence. Charging practice itself is a matter for the Crown Prosecution Service (CPS) and I am unable to comment on decisions to prosecute.

Yours sincerely,



David Pearson