



25 February 2014

MP
House of Commons
London
SW1A 0AA

Dear

We write to express grave concern regarding S16 of the Criminal Justice and Courts Bill which will extend the existing ban on extreme pornography (S63 of the Criminal Justice and Immigration Act). This section is poorly defined. It will have the unintended consequence of criminalising the possession of material that depicts consensual sex, bondage and power-play fantasies common to millions.

Pornography of all kinds has become much more accessible since the Internet has become available to the general public. In that time, the prevalence of sexual abuse has not increased in the United Kingdom and may have decreased. It is simplistic & mistaken to suggest that pornography is a cause of violence against women. Correlation is not causation. Serious academic studies of pornography and sexual violence ⁽¹⁾ show that increased availability of pornography is, in fact, associated with less violence and abuse.

Fictional and consensual portrayals of submission and domination are a common and popular sexual fantasy, as recently illustrated by the Fifty Shades of Grey novels. Indeed one of the largest surveys ever undertaken in Britain ⁽²⁾ indicated that nearly a third of us have fantasies about elements of forced sex, with approximately 2.2 million men and women having violent sexual fantasies. With around 90% of men and 60% of women viewing pornography, and with so many enjoying fantasies of this nature, the danger is that this poorly defined legislation will have a huge impact.

The Bill's Impact Assessment suggests that the number of cases cannot be predicted. When extreme material was criminalised (by S63(7) CJIA 2008) government ministers predicted there would only be 30 cases a year, but the reality was very different. In the last year for which the MoJ has provided data (2012/13), there were 1,348 prosecutions. Given that the number of people who enjoy material that features sexual bondage and power-play is so high, we fear government will create thousands of new sex offenders, most of whom will be entirely harmless law-abiding citizens.

There is also a problem with government guidance for the public and prosecutors. Just prior to the enactment of S63(7) CJIA 2008, in response to reservations, the House of Lords was promised that meaningful guidance would be issued to explain those categories that were difficult to define. This never happened. In fact prosecutors were so unsure of the meaning of the law that there have been some trials of material which we are confident Parliament never intended. For example, the prosecution of barrister Simon Walsh, a former

aide to Boris Johnson, whose legal practice had included investigating corruption within British police forces. His career in public life was ruined by a prosecution. It was rejected by a jury after 90 minutes deliberation. Prosecutors failed to prove that images depicting consensual sex acts between him and two other gay men were 'extreme'.

The prosecution also threatened the reputation of the Crown Prosecution Service as an impartial public servant by showing that gay men risked having their lives destroyed in court over intimate acts which were consensual, safe and commonly practiced within the LGBT community. Bad laws do not harm only the individuals prosecuted; they also harm the institutions tasked with enforcing them, and increase even further the costs of the justice system to the taxpayer. This proposed law will also traumatise large numbers of women and men by having their private sexual fantasies examined and shamed in public.

It is therefore vital that S16 of this Bill be refined to limit the scope of the ban to images that are produced through real harm or lack of consent. Fantasy portrayals of forced/power-play sex are too commonly enjoyed to be reasonably subject to prohibition.

We appeal to you to refine this legislation. We also ask to be permitted to put detailed evidence to Parliament at the committee stages. Finally, we ask if you would be willing to host an event in Parliament, at which representatives could speak, so that members of both Houses can better understand what is at stake.

Signed

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References.

1. Pornography, Public Acceptance and Sex Related Crime: A Review: 2009: Milton Diamond
2. British Sexual Fantasy Research Project: 2007. Brett Kahr. ISBN 978-0-713-99940-2