

Legal Regulation & Education: Doing the Right Thing?

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Criminalisation or Rape Porn: Tinkering with the Law

It has been five years since the relevant provisions of the Criminal Justice and Immigration Act 2008 criminalising the possession of extreme pornography came into force. The law has attracted a fair amount of criticism from its opponents on various grounds including its proportionality, effectiveness, practical application, and the burden it imposes on freedom of expression and privacy. The supporters of the law, on the contrary, campaigned that the law still had a major loophole because it did not specifically cover rape porn images. In an open letter to the Prime Minister, Rape Crisis South London called for 'rape porn' images to be brought within the purview of the offence. Campaigners have argued that such images promote sexual abuse of women and girls, which the government has accepted and a Bill has now been tabled before the Parliament (Criminal Justice and Courts Bill). The Bill is intended to extend the terms of the offence at Section 63 of the Criminal Justice and Immigration Act to cover this 'genre' of material.

The government has referred to two reports as possible justifications for criminalising the possession of rape porn images: the Ministry of Justice's rapid evidence assessment into the effects of exposure to extreme pornography (2007) which supported the 'existence of some harmful effects from pornography', and the Children's Commissioner's report about how exposure to sexualised and violent images could affect children and young people. The paper argues that whilst violence against women should not be condoned or encouraged in any circumstances, there is substantial uncertainty surrounding the impact of pornography on violent sexual behaviour. In particular, the evidence of harm caused by extreme pornography or rape porn images is far from conclusive and does not provide sufficient justification for criminalising the possession of such images (as opposed to publication or distribution, which is already covered under the Obscene Publications Act 1959). Possession offences are intrusive in nature with far reaching consequences for individual freedoms, and should only be used where there is clear evidence of harm or, as a minimum, a credible risk of harm. On the issue of children's exposure, whilst the paper acknowledges that the government has a compelling interest in protecting children from harmful content, it is argued that this is an entirely separate issue which the proposed law is incapable of addressing, and does not therefore provide a basis to justify the proposed offence.

Furthermore, as the scope of the proposed law includes simulated images of non-consensual sexual acts, it is very likely that the offence will capture a substantial amount of internet pornography. Whilst it is difficult to obtain accurate figures, a significant number of major pornographic websites contain so called 'hardcore pornography' which often include content depicting women as inferior (in a sexual context) to their male

partner(s) and may well attract the new 'rape porn' offence. The paper argues that this would amount to unprecedented levels of internet censorship without any sound legal or scientific basis, and that the law will not serve any purpose to effectively and realistically address the issues the government is concerned about. The paper will conclude with the argument that there needs to be a fundamental re-think of the way in which we approach the regulation of internet pornography, with a clear distinction drawn between adult and child pornography.