

Smut, Speech and the Possession Offence

Abhilash Nair

Law School, University of Strathclyde, Glasgow

Email: c.m.abhilash@strath.ac.uk

Abstract

In the light of the growing number of websites that contain extreme and violent pornography, it was proposed that new laws are enacted that render the simple possession of such material a criminal offence, which was, not surprisingly, greeted with controversy. It is already an offence in the U.K. to publish or distribute the kind of material addressed by the proposed law, but a simple possession or accessing it *per se* is not illegal. The calls for a change in the law were in response to the increasing number of extreme and violent pornography on the internet, especially on sites hosted abroad, and its relative ease of access. The Public Consultation (Consultation on the Possession of Extreme Pornographic Material) issued over a year ago highlighted a number of issues, the responses to which generally seem to be in favour of the new law. However, civil libertarians and free speech activists vehemently criticise the proposal. Child pornography laws are similar to the proposed law in some respect and have been effective in combating the menace, but there are major differences between the two. The most important of these being while the participants of the former are innocent children who are simply abused and exploited; it is very often consenting adults who feature in the latter. Does the State have the right to object to adults consenting to take part in violent or extreme pornography?

The paper looks at the rationale behind the possession offence and weighs it against its effectiveness in cracking down on child pornography on the Internet. The paper will then proceed by highlighting some of the legal issues involved in regulating extreme pornography, both at domestic and E.U. level, and contrast this with child pornography laws. This will be examined from a human rights perspective, with particular reference to free speech and privacy rights under the ECHR regime. The paper will analyse if the possession offence for extreme pornography undermines any of these, in which case it would be wiser to explore other possible avenues for regulation.