

Internet Porn Laws: they won't work and they herald further controls

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Controlling Internet Porn has to be a good idea, right? Not always. One of Britain's leading experts on internet law has criticised the government's latest attempt to control the availability of extreme Internet pornography through a new law known as Section 63 of the [Criminal Justice and Immigration Act 2008](#), which came into force last week. [Andrew Murray, a Reader in Law here at the LSE](#), says the law, which aims to crack down on images that mix sex and violence or which portray necrophilia or bestiality will be impossible to enforce as intended. Instead, it will be used by police to prosecute consenting adults who indulge in fetishes such as bondage, dominance and sado-masochism (BDSM). The law was introduced after the killing of [Jane Longhurst by Graham Coutts in 2003](#). Coutts was found to have been a regular visitor to websites dedicated to asphyxiation and necrophilia before committing murder.

In an article published in the [Modern Law Review](#), Murray writes:

'The outcome of the lawmaking process seems to have left both sides dissatisfied. This law has been more than three years in the making and has involved a considerable degree of public participation, Parliamentary scrutiny and media analysis, yet despite all this neither side is fully satisfied that the law has achieved its aims or that their concerns have been met in the lawmaking process.'

'Those who support a strong legal response to the challenge of extreme pornography are disappointed that in the Lords Committee stage key concessions were made which appear to have diluted the applicability of the new law to all but the clearest examples of harm, violence or threat. 'Rape fetish images appear to have escaped the attentions of Section 63 except in their most severe form, while images of sexual violence, torture or threat to life must now pass a number of hurdles including that they are grossly offensive, disgusting or otherwise of an obscene character, and that they must portray in an explicit and realistic way the illegal act in question. These seem substantial hurdles for the prosecution to surmount when the first cases come to trial. 'From the alternate point of view there remains real concern that Section 63 will be used as a proxy to crack down on the activities of fetish communities... It has been within the authority of the police to charge participants in BDSM activity with a variety of offences including assault occasioning actual bodily harm. 'The number of such actions remains though extremely low as to do so involves usually the Police having to enter a private property while the activity is ongoing: a challenge of both logistics and Article 8 of the ECHR.'

'The fear is that as trading in sadomasochistic pornography is the soft underbelly of the BDSM community; police will use Section 63 as a Trojan Horse to regulate the underlying activity. "Whether Section 63 is a success of the lawmaking process in providing a settlement between two polarised views: the result of the democratic process in action or the failure of Parliament and the Government to grasp the nettle of this difficult and divisive issue will probably only become apparent once courts and jurors are asked to rule on and apply its terms.'

Commenting in general terms about the problem of controlling internet pornography, Mr Murray says:

'Legal controls over the importation and supply of pornographic imagery promulgated nearly half a

century ago in the Obscene Publications Acts have proven to be inadequate to deal with the challenge of the Internet age.

'With pornographic imagery more readily accessible in the UK than at any time in our history, legislators have been faced with the challenge of stemming the tide.' The article begins by examining the consultation process and concludes that an underlying public policy objective was the root of the new offence despite the lack of a clear mandate for such a policy.

It then examines whether this weakness in the foundations for the proposed new offence caused the proposal to be substantially amended during the Committee Stage of the Criminal Justice and Immigration Bill: to the extent that the final version of Section 63 substantially fails to meet the original public policy objective. Murray concludes by asking whether Section 63 may have unintended consequences in that it fails to criminalise some of the more extreme examples of violent pornography while criminalising consensual BDSM images, and questions whether Section 63 will be enforceable in any meaningful way.

Get the full text of Andrew Murray's article [here](#)

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