

Criminalising Extreme Pornography Lessons from England & Wales

Professor Clare McGlynn and Professor Erika Rackley

Until 2008, the law in England & Wales only prohibited the production and distribution of obscene materials, including pornography which ‘depraves and corrupts’ its viewers. However, obscenity prosecutions had become increasingly rare, largely because this kind of material is being produced outside of the UK and distributed via the internet.

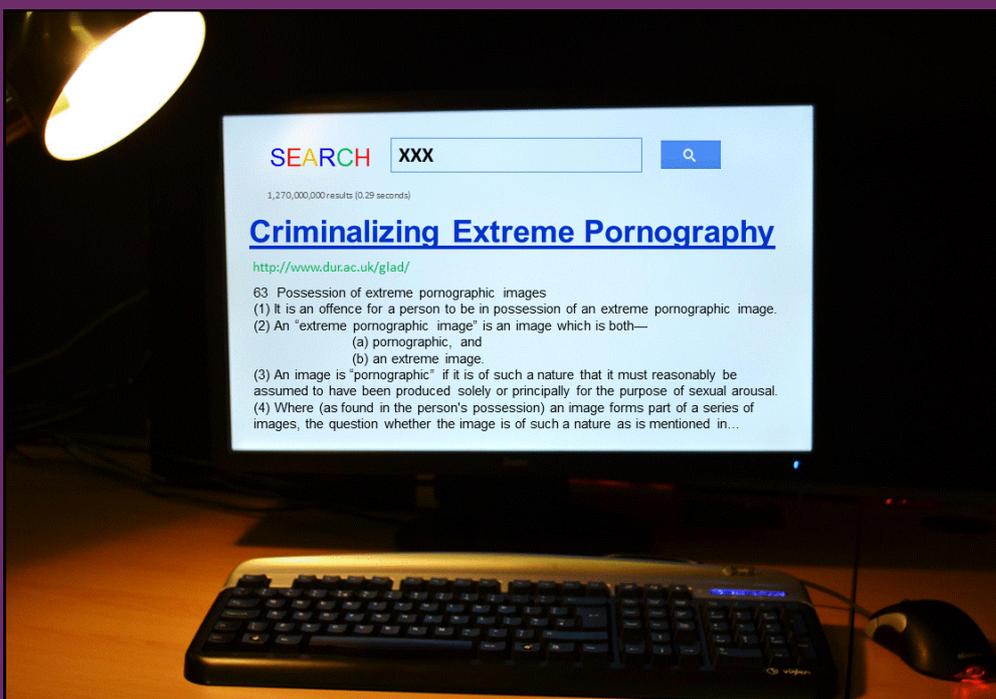
Therefore, a new law was adopted which, for the first time, made it a criminal offence to possess ‘extreme pornography’, broadly defined as pornographic images of bestiality, necrophilia and serious

violence. This law means that anyone downloading such material onto their own computers, phones and other devices runs the risk of criminal prosecution. The aim is to target the users of extreme pornography by taking action against those who download, and therefore generate the demand for, such material. McGlynn & Rackley argue that this law can be justified because of the ‘cultural harm’ of these forms of extreme pornography.

However, the extreme pornography law now needs reform. McGlynn & Rackley argue that the law is over-

inclusive: it allows for the criminalisation of many average depictions of consensual sadomasochistic (BDSM) material. However, it is also under-inclusive by excluding the vast majority of pornographic images of rape.

The lesson from England & Wales is that there is another way to tackle the prevalence of extreme pornography – by challenging the demand for pornography. However, English law itself needs reform so that it covers pornographic images of rape which inexcusably remain beyond the law on extreme pornography.



The Law on Extreme Pornography

It is a criminal offence in England & Wales to possess ‘extreme pornography’. This includes any pornographic material which is **grossly offensive, disgusting or otherwise obscene** and that **explicitly and realistically depicts**:

- a) Life threatening injury
- b) Serious injury to a person’s anus, breasts or genitals
- c) Bestiality or
- d) Necrophilia

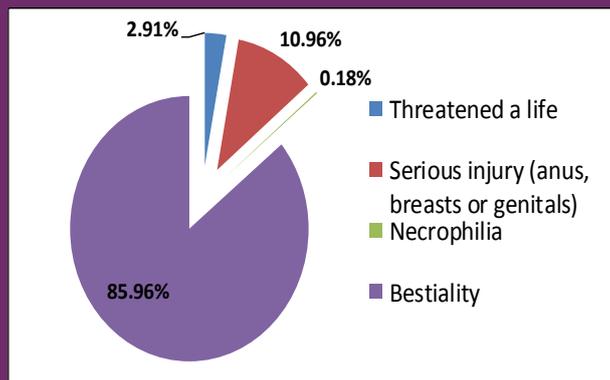
Sections 63-67 of the Criminal Justice and Immigration Act 2008 (CJIA)

Prosecutions for Possession of Extreme Pornography

Breakdown of cases reaching hearing by category of extreme pornography (2008-2011)

Type of extreme pornography	Number of cases
Life threatening injury	65
Serious injury	245
Necrophilia	4
Bestiality	1922
Total	2236

Percentage of total cases to reach hearing by category of extreme pornography (2008-2011)



Between July 2008 and November 2011 there were 2,236 cases of possession of extreme pornography which reached a hearing. The vast majority of these charges were for possession of pornographic images of bestiality. (CPS figures, 2012)

Why should extreme pornography laws include images of rape?

Pornographic rape images are extreme porn

Pornographic images of rape and other sexual violence glorify and sexualise violence against women. That the current law fails to encompass such images exemplifies society's failure to take sexual violence seriously, which is manifested in the continued prevalence of rape myths and the low conviction rate for rape.

This is not to suggest that the viewer of pornographic images of rape will necessarily go on to rape or commit other acts of sexual violence. Arguments of direct, causal links between pornography and violence are over-simplistic. Nevertheless, the proliferation and tolerance of such images, and the message that they convey, contributes to the creation and perpetuation of a cultural climate in which sexual violence is condoned, and seen as a form of entertainment.

Pornographic images of rape are culturally harmful

Legislative action against pornographic images of rape, and extreme pornography generally, is justified because of the 'cultural harm' of such material. The existence and use of extreme pornography contributes to the cultural context within which society fails to take sexual violence against women seriously.

Potential impact of pornographic images of rape on young people

Pornographic images of rape and sexual violence are easily and freely accessible online. There are growing concerns over young people being exposed to this material, and the potential harms that could result from this, as part of the broader pornification of society.

Pornographic rape websites

Below are brief details of a random selection of pornographic rape websites, accessed easily and freely via a standard Google search.

Who is the rape victim? 'teens', 'tinschoolgirls', 'daughters', 'sisters' and 'nuns'

Force and Violence: Though there is some potentially 'life-threatening' use of guns and knives, force is otherwise achieved with ropes, gags, chains, belts, handcuffs and the physical strength of the rapist — force which will not automatically lead to 'serious injury to anus, breast or genitals'.

Quotes from rape pornography websites

'Nothing is better than seeing these good looking sluts getting raped'

'See them getting brutally forced to sex [sic] against their will ... these little sluts beg for mercy while the rapist just hit and thread [sic] them while he penetrates them hard and rough and enjoy [sic] to hear them cry'

'Innocent teen girls face their worst sex-related nightmare ... men lose control and don't give a f_ck whether she says yes or no ... in fact, the guys enjoy a "no" more'

'It doesn't matter if they want it or not'

It is 'time to become Tough Guys. Right now'

Clare McGlynn is a Professor of Law at Durham University and is a regular contributor to media and public debates on pornography regulation. She is also an expert on rape law and is co-editor of *Rethinking Rape Law: International and comparative perspectives* (2010)
clare.mcglynn@durham.ac.uk

Erika Rackley is a Professor of Law at Durham University and is author of *Women, Judging and the Judiciary: From Difference to Diversity* (2012)
erika.rackley@durham.ac.uk

References

Rackley, Erika & McGlynn, Clare (2013) 'Prosecuting the Possession of Extreme Pornography: A Misunderstood

and Mis-used Law' *Criminal Law Review*: 400-405.

McGlynn, Clare & Rackley, Erika (2009) 'Criminalising Extreme Pornography: A Lost Opportunity' *Criminal Law Review* 245-260.

McGlynn, Clare & Rackley, Erika (2007) 'Striking a Balance: Arguments for the Criminal Regulation of Extreme

Pornography' *Criminal Law Review*: 677-690.

McGlynn, Clare & Rackley, Erika (2007) 'The Politics of Porn' *New Law Journal*: 1142-1143.

McGlynn, Clare, Rackley, Erika & Westmarland, Nicole (2007) *Positions on the Politics of Porn: a debate on Government plans to criminalise the*

possession of extreme pornography:
www.durham.ac.uk/law/research/politicsofporn/report

Please cite this document as: McGlynn, Clare & Rackley, Erika (2013) 'Criminalising Extreme Pornography: lessons from England & Wales', Durham Law School Briefing Document, Durham University.