

İngiltere “Extrem Pornografi suçuna” ağır cezalar getirdi.

[Extreme Pornography Offence includes disproportionate penalties](#)

Inconsistencies with other legislation within the extreme pornography provisions of the Criminal Justice and Immigration Bill will lead into definitional problems, and disproportionate penalties argues Dr. Yaman Akdeniz.

According to subsection 7 of Clause 62 of the Criminal Justice and Immigration Bill (HL Bill Third Reading) on Possession of extreme pornographic images, an “extreme image” falls within this subsection if it portrays, in an explicit and realistic way, any of the following—

- (a) an act which threatens a person’s life,
- (b) an act which results, or is likely to result, in serious injury to a person’s anus, breasts or genitals,
- (c) an act which involves sexual interference with a human corpse, or
- (d) a person performing an act of intercourse or oral sex with an animal (whether dead or alive), and a reasonable person looking at the image would think that any such person or animal was real.

However, section 69 of the Sexual Offences Act 2003 criminalizes intercourse with a living animal (rather than a pseudo-animal). Unlike the proposed clause 62 provisions, section 69 does not cover oral sex with animals. Similarly, section 70 of the Sexual Offences Act 2003 criminalizes sexual penetration of a corpse but unlike the proposed clause 62 provisions it does not cover “sexual interference” with a human corpse.

Under clause 65 of the Criminal Justice and Immigration Bill (HL Bill Third Reading) which deals with penalties for possession of extreme pornographic images, the commission of a possession offence in relation to clause 62(7)(c) (*an act which involves sexual interference with a human corpse*) or 62(7)(d) (*a person performing an act of intercourse or oral sex with an animal*) attracts a penalty on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both. However, currently, a person guilty of an offence under section 69 or section 70 of the Sexual Offences Act 2003 face the same amount of penalty - on conviction on indictment, to imprisonment for a term not exceeding 2 years.

Surely, intercourse with a living animal or the sexual penetration of a corpse under the 2003 Act are more serious offences than simple possession of a real or appears to be real image. Therefore, the proposed possession offence penalties under clause 65 of the Criminal Justice and Immigration Bill (HL Bill Third Reading) remain disproportionate.

<http://cyberlaw.org.uk/2008/05/01/extreme-pornography-offence-includes-disproportionate-penalties/>

XX

Extreme Porn Provisions: Unanswered Questions

The Criminal Justice and Immigration Bill has just finished its Third Reading Debate at the House of Lords ([30.04.2008](#)) and there seem to be little hope for improvement (or complete abandonment) when it goes back to the House of Commons for its third reading.

However, certain questions remain unanswered and it is not clear whether these will be clarified within the Bill and whether further guidelines will be necessary, assuming that these provisions dubbed as the Dangerous Pictures Bill will become law.

1. [Extreme Pornography Offence includes disproportionate penalties](#) with regards to clause 62(7)(c) (an act which involves sexual interference with a human corpse) or 62(7)(d) (a person performing an act of intercourse or oral sex with an animal). Surely, intercourse with a living animal or the sexual penetration of a corpse under the Sexual Offences Act 2003 are more serious offences than simple possession of a real or appears to be real image. Currently, they attract the same penalty. You decide which one is worse.

2. Overnight (when the provisions come into force) an activity which was deemed to be legal will become illegal. So far, no guidance has been issued (although questions raised at the HL) in terms of what Joe Public should do with regards to his collection of pornography. How is Joe going to know which of the items he possess are of an extremely dangerous kind?

3. Possession of digital content is also problematic from a technical point, and simply deleting dangerous images may not be enough to avoid prosecution. A recent Court of Appeal decision with regards to deleted images involving child pornography (*R v Porter* [2006] EWCA Crim 560) established that it may not be so easy to get rid of images from one's computer. Following the decision of the Court of Appeal, in the scenario of Joe knowingly downloading child pornography (or for that matter extreme pornography) but deciding to delete them with no intention to undelete or recover them, Joe would expect to avoid possession and could have a defence, if the images were in deleted state and unrecoverable by Joe at the alleged time of possession and Joe does not have in his possession software which is capable of recovering deleted images or there is no evidence to suggest that Joe tried to recover the deleted images by such software. Following *Porter*, it would be a matter for the jury to decide whether the deleted images were within the control of Joe having regard to all the factors in the case, including his knowledge and particular circumstances and the available evidence.

4. Finally, it is very very easy to stumble upon pornographic websites on the Internet, either deliberately or by mistake. The users, in most cases, are not in a position to know, prior to accessing such sites whether the content provided on such sites would be regarded as illegal and dangerous under the Criminal Justice and Immigration Bill provisions. This will create lot of anxiety among the members of the public. There is no discussion yet whether the government (presumably through the Ministry of

Justice) will issue any guidance in terms of what could be regarded as illegal and should be avoided, and what the users should do if they come across such sites inadvertently. In such a scenario Joe Public may have a defence under clause 64(2)(ii) if he did not keep the material for an unreasonable time (for example immediately emptied his browser's cache).

These are only some of the unanswered questions that I can think of right now and please do let me know if you have any further puzzling answered issues with regards to these provisions.

Please also see a later piece that I wrote entitled [Extreme Pornography: Sentencing Issues](#) which discusses potential sentencing problems with regards to future "convicts".