NATIONAL CAMPAIGN FOR THE REFORM
OF THE OBSCENE PUBLICATIONS ACTS

NCROPA

FIGHTING SEXUAL CENSORSHIP

Criminal Justice and Public Order Bill
~ Part VII

A CRITIQUE

FEBRUARY 1994

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NATIONAL CAMPAIGN FOR THE REFORM OF THE OBSCENE PUBLICATIONS ACTS

(NCROPA)

CRIMINAL JUSTICE AND PUBLIC ORDER BILL 1993

A CRITIQUE OF PART VII

("Obscenity and Pornography and Videos")

In this considered critique of the Criminal Justice and Public Order Bill (1993), the National Campaign for the Reform of the Obscene Publications Acts (NCROPA) has concerned itself only with those Sections which are of direct relevance to the NCROPA and its aims and aspirations. These are Sections 64 to 68 (inclusive) which together form Part VII (headed "Obscenity and Pornography and Videos") of the Bill. They are all concerned, one way or another, with various aspects of 'freedom of expression' in general and 'freedom of sexual expression' in particular. (A copy of Part VII is appended hereto - see Appendix A).

SECTION 64

(Indecent pseudo-photographs of children)

This Section adds further proscriptive measures to those already existing concerning the making, distribution or even mere possession of "indecent" photographs of children under 16 years of age. Its alleged purpose is to outlaw "indecent" images of children under 16 whether produced by photographic or any other means, including the computer. It introduces the new legal concept of the "pseudo-photograph" to define such images.

Whilst the NCROPA's central aim is the decriminalisation of the publication of sexually-explicit material of, by and for consenting adults in the U.K., to bring us into line with most other 'free-world' countries including virtually the whole of the European Union, and whilst it is not, therefore, opposed to statutory measures which proscribe the publication of sexually-explicit material of or involving children under 16 years of age, it is deeply concerned by the inefficacy of some of the existing statutory measures supposedly for this specific and limited purpose only, and over the escalating serious police and customs officers' abuses and misuses of the present legislation incorporated in Section 160 of the Criminal Justice Act 1988 (which amends the Protection of Children Act 1978 by criminalising mere possession of "indecent" photographs of children under 16). The NCROPA's concern centres around the widespread (and increasing) improper police and customs interpretation of "indecent" as any photograph of a child under 16 (or who appears to be under 16) in which the child appears nude, however innocent, innocuous or legitimate the photograph may be. In other words, as far as police and customs officers are concerned, nude = "indecent". This is result-

ing, and has resulted, in some horrendous cases of police/customs harassment and persecution of a number of people (including celebrated, internationally-famed professional photographers, as well as ordinary parents 'shopped' by muck-raking, over-zealous, busy-bodying 'High Street' photo-processing shops and labs.) The police and customs, bending the law to its utmost and revelling in this utterly wrong, 'catch-all' interpretation the present law affords them, then delight in using it as a pretext for obtaining warrants to search the homes and work-places of such people, seize their work and property and publicly stigmatise them as potential (or actual!) child abusers or active paedophiles, when in most cases no such guilty scenario exists or has ever existed. This is a scandalous abuse of police and customs powers under the Act and it has only been possible for it to occur because of the flawed drafting of its provisions in this area and to which the NCROPA drew attention during <u>its</u> legislative passage in Parliament. It is essential that these serious flaws are remedied in the <u>present</u> legislation before any consideration whatsoever is given to strengthening and extending that legislation, which is what the Criminal Justice and Public Order Bill 1993 seeks to do.

N.B. On 15th March 1988 the NCROPA made strong representations both to the Government and the Standing Committee examining the 1988 Criminal Justice Bill (now the Criminal Justice Act 1988) after the Government had added as an amendment, the clause which criminalises mere possession of "indecent" photographs of children under 16. Although, as we clearly pointed out, the NCROPA campaigns for true freedom of expression of and for consenting <u>adults</u>, and was not, thus, opposed in principle to this then new clause, it had strong reservations about a number of specific aspects of its form and content. Our major concern was over the inclusion of the bald, undefined term of "indecent" which was, we stated, ".... vague, imprecise and totally subjective....". We recommended then that the meaning of "indecent" within the context of the Bill should be clearly, legally defined. We made this plea because we could forsee the potential dangers of 'letting loose' so vague a yardstick definition on arrest-happy, unscrupulous, irresponsible police and customs officers. Our fears of such dangers have proved to be well-founded. Members of the Opposition in Committee (led by Labour M.P. Mrs. Ann Taylor, shadow cabinet front-bench spokesman on Home Affairs at that time) also expressed their fears, but allowed themselves to be duped by John Patten M.P., Minister of State at the Home Office at the time, when he gave the Standing Committee an assurance "that it was not the intention to catch innocent family snaps of naked children in the bath or on the beach and he thought that works of art or genuine educational material would not be affected." ("Daily Telegraph" 16th March 1988). They consequently, and regrettably, voted for the unamended clause.

As we all now know, from the likes of scandalous cases such as those of celebrated child photographer Ron Oliver and internationally eminent painter, photographer and historian Graham Ovenden, and others, John Patten's parliamentary assurance has been, and is being, flagrantly and consistently broken. And Even if the material seized by police and customs officers in these circumstances is subsequently determined <u>not</u> "indecent" and not, therefore, 'guilty', the enormous damage and harm caused to the innocent victims by the inevitable (and often deliberately encouraged) attendant media coverage is incalculable. Indeed, Mr. Patten himself virtually acknowledged that fact when, in explaining why it was not appropriate for imprisonment to be a pen-

alty for mere possession of "indecent" photographs of children (something which is now proposed in this current 1993 Bill, of course!), he said "In many cases the shame of conviction for this new offence of possession could be a greater punishment than the maximum fine" - and thus, how much greater the shame would be of the punishment of untrue publicity for a 'crime' that has not even been committed!

The new additional measures (additional to the Protection of Children Act 1978 and the Criminal Justice Act 1988) which this present Criminal Justice and Public Order Bill (1993) incorporates and which are purportedly designed chiefly to combat what has colloquially (and inflatedly, hysterically and unjustifiably) become known as the upsurge of 'computer child-porn', i.e. sexually-explicit images of children produced and/or disseminated, and/or stored by computer, will extend the present dangerously unsatisfactory prohibitive measures just described. They are thus of similar deep concern to the NCROPA and unacceptable.

The NCROPA's considered views on so-called 'computer pornography' in general were set down in the Memorandum we were invited to submit to the House of Commons Home Affairs Committee last October (1993). According to John Greenway M.P. (Conservative, Ryedale), speaking in the House of Commons Second Reading debate on the Bill on 11th January 1994 (see "Hansard" 11/1/94 Col.64),"the Home Affairs Committee has not yet completed its inquiry into computer pornography." This indicates that the Committee's findings could not have been taken into consideration before the Bill in its present form was drafted. Since that must be so and since only MPs serving on that Committee will, so far, have been afforded the opportunity of reading the NCROPA's "Memorandum" to it, it is appended hereto (see Appendix B) in its entirety. IT IS OF PARAMOUNT IMPORTANCE THAT THIS "MEMORANDUM" IS READ BEFORE OUR DETAILED CLAUSE-BY-CLAUSE COMMENTS AND OBSERVATIONS, WHICH FOLLOW.

Section 64 (1)

- Delete the whole clause. For reasons explained in our 'Memorandum' to the Home Affairs Committee (hereinafter called 'the Memorandum'), we do not accept that there is a sufficiently strong case to warrant the blanket imposition of this particularly ruthless addition (of so-called "pseudo-photography") to the Protection of Children Act 1978, notwithstanding that the introduction of this spurious new legal term will inevitably result in interminable legal wrangles, quirky court judgments and provide yet another certain 'field-day' for the lawyers. Other countries get along very nicely without such dubious legislation and it presents them with no worries or problems. There is no reason to believe that the U.K. would not do likewise.

Section 64 (2)

- Delete the whole clause. For reasons given above (see Section 64 (1)).

Section 64 (3)

- Delete the whole clause except "Section (4) References to a photograph includes - (a) the negative as well as the positive version" (lines 22 & 23)

Section 64 (4)

- Delete the whole clause. For reasons given above (and in Section 64 (1) above)

Section 64 (5)

- Delete the whole clause (except as below - see Section 64 (6))

Section 64 (6)

- Delete the whole clause except "(c) references to a photograph include - (i) the negative as well as the positive version" (lines 42 & 43)

Section 64 (7)

- Delete the whole clause. For reasons given above.

SECTION 65

(Arrestable offences to include certain offences relating to obscenity or indecency)

These proposals in the Bill will empower the police to arrest without a warrant anyone committing an offence under either Section 2 of the Obscene Publications Act 1959 (i.e. anyone who "whether for gain or not publishes an obscene article" - publishing includes simply showing), or Section 1 of the Protection of Children Act 1978 (i.e. anyone who takes or permits to be taken any "indecent" photograph of a child under 16; or distributes or shows such "indecent" photographs; or has in his or her possession such "indecent" photographs with a view to their being distributed or shown by him or herself or others; or publishes or causes to be published any advertisment likely to be understood as conveying that the advertiser distributes or shows such "indecent" photographs, or intends to do so.) They are as outrageous as they are absurd. The absurdity of such proposals would be laughable, were it not for the fact that the implementation of this Section 65 would mean, in effect, that any police officer could arrest without a warrant anyone he (or she) considered had breached these Acts. That would, in turn, mean that any individual police officer would be entrusted with the formidable (not to say impossible) responsibility of determining instantly and categorically whether or not a particular article (book, magazine, video, film, photograph, newspaper etc.) in someone's possession was or was not "indecent" or "obscene". The determination of such an on-the-spot assessment would be the sole deciding factor as to whether or not someone was arrested - i.e. instantly deprived of his or her liberty.

These highly contentious concepts of 'indecency' and 'obscenity', which constitute the test qualification for illegality in these two aforementioned Statutes concerning State censorship, and, indeed, in virtually all of the U.K.'s abundant State censorship legislation of one kind or another, are intolerably vague, imprecise, unquantifiable, immeasurable and, above all, incapable of being interpreted in any

way other than completely subjectively. For the 56 million + Britons in the U.K., there will be 56 million + different interpretations of the meaning of "obscene" and "indecent". Furthermore, those 56 million + different interpretations are themselves constantly changing, something to which the British courts will testify, vainly struggling over the years, as they have been, to make universally consistent objective evaluations across the land of the totally unobjectifiable, and whose resultant judgments are consequently dispensed with all the judicial fairness and merit of a lottery. It hardly seems credible that the publication of "Lady Chatterley's Lover" was once banned because it was considered "obscene". Yet such are the vagaries of our 'obscenity' legislation that it took a lengthy Old Bailey trial (1960), involving the deliberations and expertise of the great and the good, of celebrated intellectuals and academics of the highest calibre, to decide that, all of a sudden, "Lady Chatterley" was no longer "obscene".

If this proposed new legislation is passed, such evaluations (including those of possible literary or artistic merit and the like) will alarmingly be left to the ordinary 'bobby-on-the-beat'. On his spontaneous appraisal of any discovered material will rest the decision to make an on-the-spot arrest. The dangers of putting so powerful a 'weapon' in the hands of so many potentially ill-equipped, ill-qualified police officers (to make such a decision), or the potential dangers of its abuse and mis-use by bigoted, over-zealous, prejudiced police officers, only too eager and ready to employ and impose their <u>own</u> entirely subjective moral standards of taste and acceptability on others, in this 'grey' area of the law, are patently obvious and frightening.

Perhaps even more frightening are the potential powers that will consequently be afforded the police, by this extension of the list of arrestable offences without a warrant in the Police and Criminal Evidence Act 1984, to raid peole's homes (or, indeed, anywhere else) <u>without a search warrant</u> if they have "reasonable grounds" to believe that an offence contrary to Section 2 of the Obscene Publications Act 1959 or Section 1 of theProtection of Children Act 1978 is being or has been committed. That could result in the police breaking into private homes, searching them and possibly arresting their occupants simply on the flimsiest information or pretext of there being supposedly illicit material on the premises. It is also of prime importance to remember that such illicit "obscene" material can also include material other than sexual material. The U.K. courts have often deliberated upon and convicted in cases involving non-sexual allegedly "obscene" articles, e.g. violent horror videos, or even books of a political nature. To afford the police so massively oppressive a power as the Bill contemplates is horrifying and gives the NCROPA the gravest cause for concern. We strongly urge its removal.

Our present U.K. situation is repressive and grim enough, wherein sexually-explicit publications - even for consenting adults! - are rigidly proscribed. That is an intolerable state of affairs which long ago should have been rectified, so that U.K. citizens are allowed freely to enjoy such publications, if they so choose, just like virtually all other citizens from other so-called 'free-world' countries, including all European Union Member States (with the exception of the tiny country of Ireland - population a mere 3½ million, representing only 1% of the whole E.U. population). The Bill, however, seeks to add to and strengthen our already draconian 'obscenity' legislation.

At least with the present legislation allegedly "obscene" or "indecent" material, after being seized by the police using a search warrant, has to undergo proper scrutiny and appraisal by the police (initially), by the Crown Prosecution Service (subsequently) and then, if thought to be illegal, by the Courts (as a final arbiter). It is only then, after a court of law's guilty judgment that the seized material and its publisher/displayer becomes, as it were, 'arrestable' (if the judgment so demands). The existing laws in consideration (the Obscene Publications Act 1959 and the Protection of Children Act 1978 and the Police and Criminal Evidence Act 1984) were all drafted with this crucially important incorporated safeguard expressly to curb unacceptable, intolerant and idiosyncratic incursions by the authorities into 'freedom of expression' and to prevent improper police interference, mistreatment and persecution. In the proposed new legislation in the Bill, that vital safeguard will be removed.

In the NCROPA's view, the Government (and many M.P.s) have allowed themselves to be deceived by some of those over-zealous police officers the NCROPA has had in mind whilst preparing this critique. These police officers have quite improperly entered into the political arena regarding this subject, by actively and publicly aligning and associating themselves with well-known pro-censorship, anti-'pornography' organisations and factions, and have thereby been actively campaigning for more and ever stronger "obscenity" laws and police powers. Such activities are clearly proscribed by The Police Regulations 1987 (S.I. 1987 No. 851, see Part II, Section 10 and Schedule 2, Para. 1) but, in spite of formal complaints to the Police Complaints Authority and protests up to Home Secretary level, by the NCROPA's Honorary Director, no attempt was made to stop them and no action was taken against them. Whilst some of their professional police duties and activities against child-abusers in this field can only be supported and applauded, there is no doubt that they have widely exploited - and exaggerated - the emotive 'child-porn'/paedophile syndrome for their own ever power-hungry, empire-building ends.

The classic example of this was the carefully stage-managed and multi-hyped 'exhibition' prepared for M.P.s and the Press at the House of Commons on 24th and 25th February 1993, under the auspices of Mrs. Ann Winterton, M.P., a long-time, well-known, prominent, fanatical 'anti-porn' campaigner (with her fellow M.P. husband Nicholas Winterton, who tried so desperately, but thankfully unsuccessfully, to pressure the Director of Public Prosecutions to prosecute Madonna's innocuous book "Sex" and have it banned.) Although Mrs. Winterton refused a request for a NCROPA representative to view the exhibition, we know from the Press and other M.P.s that it was quite unrepresentative of the kind of harmless (albeit still illegal in this country) sexually-explicit material so freely legally available elsewhere in the world, but instead featured examples of the most extreme, bizarre, uncommon and stomach-churning material, including that involving very young children (very rare). It was obviously deliberately selected (from police archives) to shock and horrify and to give the impression that that extreme kind of material was commonly in general circulation in a vast, open U.K. "pornography" market-place, when it is not. The 'exhibition' was thus a distorted, dishonest reflection of the true picture in this savagely controlled country, and, we believe, deliberately designed to rabble-rouse and pander to the biased, prejudiced, and hugely subjective views of those'Mary Whitehouse Mafia' M.P.s who back up and sup-

port the police's (or, at least, the Metropolitan Police's) own bigoted, individual views and vested interests.

Sexually-explicit material (or "pornography") has never been proved to be harmful. Furthermore that is the conclusion of all the world's major, really credible investigations into the effects of such material, including, of course, the U.K.'s own, comprehensive Home Office Committee on Obscenity and Film Censorship (see the Williams Report, HMSO Cmnd 7772, 1979) and the Home Office Research and Planning Unit's Review: "Pornography: impacts and influences" (1990). That the U.K. 'nanny-state' Government should be planning further restrictions and prohibitions on "pornography" to the already excessive restrictions it imposes on the citizens of this censor-obsessed country,rather than getting rid of most of these, brings national disgrace on a country which prides itself as the 'mother-of-the-free. This Section 65 in particular amongst these Part VII measures, is especially repugnant. It smacks heavily of police-state tactics and is totally unacceptable in a purportedly 'free society'. It introduces legislation which is the complete antithesis of the kind of legislation demanded of a nation internationally committed and bound to the pursuit and implementation of true freedom of expression. It should be deleted in its entirety.

Section 65 (1)

- Delete the whole clause (For the reasons given above.)

Section 65 (2)

- Delete the whole clause (For the reasons given above).

Section 65 (3)

- Delete the whole clause (For the reasons given above.)

SECTION 66

(Indecent photographs of children: sentence of imprisonment)

Reference has already been made in this critique to the deliberations on Section 160 of the Criminal Justice Act (the legislation which criminalised mere possession of "indecent" photographs of children under 16) when, in 'Bill' form, it was being considered by the House of Commons Standing Committee and when certain categorical assurances about the implementation of the Act were given by the then Minister of State at the Home Office, John Patten, M.P.. Mr. Patten also gave an explanation of and justification for not making the punishment of imprisonment available to the courts for those convicted of offences concerning mere possession of "indecent" photographs of children under 16 (see page 2). Mr. Patten said then (on 15th March 1988) that "imprisonment had been excluded as a penalty because possession was not as serious as producing or trafficking in the material." The Government view then has, for some unexplained reason, been completely disregarded by the present Government (and even though Mr. Patten, although no longer a Home Office Minister, is still in the Government - and now also of Cabinet rank). That so harsh a punish-

ment as imprisonment should now be advocated for a non-violent, victimless crime (and which would not even be a crime at all in most other 'free' western-world countries, including other Member States of the European Union)/. Furthermore, is disturbing, as we have already shown by instancing some deplorable cases of wrongful police action, the inevitably flawed and always uncertain drafting of such a law on this 'criminal' practice (i.e. of being in simple possession of an allegedly "indecent" photograph of a child under 16), which necessarily renders it unreliable and equivocal, makes a severe penalty like imprisonment even more unjustifiable - especially when imprisonment, even for authentic cases of child abuse in this context, would serve little rehabilitative or curative purpose.

Moreover, the U.K. already has the largest number of people in prison pro rata of the population, of any European country, and more than half of these are serving prison sentences for non-violent crimes. On 2nd February 1994, the former Conservative Home Secretary, Lord Carr, warned the present Home Secretary, Michael Howard, M.P., that allowing the prison population to rise would prove "a disaster which would put back the attack on the crime wave to a serious extent." He was supported in that by senior High Court of Appeal Judge Lord Woolf, also speaking in the House of Lords on that date, who said "for the majority of offences prison is an immensely expensive process and should be reserved only for those for whom it is appropriate. As a result of the changing climate the importance of avoiding custody where it is inappropriate to do so has been forgotten. The increase in the prison population is an expensive way of making the criminal justice system less effective." Lord Carr also said that prison was "the most expensive and least effective means of deterring criminals." It would certainly not be "effective" in deterring those unfortunate people who have a spontaneous sexual propensity for pictures of children and who require help and understanding if they are to be dissuaded from <u>their</u> natural inclinations, rather than, as Lord Woolf described it, "the corrosive influence" of prison.

Every day we see "indecent" (often "obscene") photographs of children under 16 in newspapers, magazines and on television screens. In a 'free society', that it should ever be an offence merely to possess a photograph of <u>anything</u>, however offensive, loathsome or repulsive, is to go down a very dangerous path, indeed, and it is quite contrary to the fundamental principles of freedom of expression and freedom of information. A criminal <u>act</u> must, indeed, be penalised, but <u>not</u> a mere photographic record of that act.

This Section 66 should, therefore, be deleted in its entirety.

<u>SECTION 67</u>

<u>(Extended enforcement of Video Recordings Act 1984)</u>

This Section introduces amendments and extensions to the Video Re-Cordings Act 1984, which effectively renders all commercially-produced video cassette recordings (and even many which are not) subject to authoritarian pre-censorship by the State. All such video cassette recordings are required to be submitted to the appointed State censor (euphemistically called in the Act "the designated

authority" - it is "designated by the Home Secretary, a Government Minister which means there is a strong political element in any such 'designation') prior to their publication/marketing, and that "designated authority" (the official 'State Censor') has the swingeing power, not simply to classify, but to ban any video of which it (viz the State) does not approve.

Before the merits and demerits of the new measures here proposed in this Section are discussed and evaluated, it is important that the NCROPA's views on the Video Recordings Act 1984 per se are made clear. Of all the many statutes and pieces of common law appertaining to censorship in the U.K., the NCROPA considers this Act to be the most monstrous, because it re-introduced here the concept and reality of pre-publication censorship by the State. After the unlamented demise of the Lord Chamberlain's 'blue pencil', with the passing of the Theatres Act in 1968 and which banished pre-production censorship of theatrical performances, no piece of State legislation remained which required any publication (newspaper, book, magazine, photograph, gramophone record, film, television programme, video, computer disk etc.) to be submitted to any State or quasi-State Censor, or State-appointed censorship body, prior to publication. Our other repressive legislative restraints still operated, of course, but, ghastly and unacceptable though most of them were - and sadly still are (and having since been added to still more) -, they all could only impose restrictions and prohibitions after publication and only if a court of law so decided. The 'Orwellian' Video Recordings Act, passed by Parliament most fittingly in "1984", was and is a disgracefully retrograde step for freedom in this country and, in the NCROPA's view, an Act which, apart from provisions regarding the classification only (but definitely not prohibition) of videos, should be scrapped.

It will come as no surprise, therefore, that the NCROPA is totally opposed to the proposed new amendments in Section 67 regarding extending the already existing powers of Local Weights and Measures Authorities to enforce the provisions of the Act and which were granted them by virtue of the provisions of Section 162 of the Criminal Justice Act 1988 which, in turn, duly amended the Video Recordings Act 1984 for that purpose. Local Weights and Measures Authorities should not be used to do the Government's 'dirty-work' as an integral part in the national operation of repugnant State censorship. Local Authorities exist to serve the local needs of a well-defined local area. Apart from the intrinsic impropriety of such activities in principle, the extension of their jurisdiction in this respect to local authority territories other than their own, is fraught with the inevitable dangers of inter-area dispute, rivalry and disagreement, and, no doubt, potential empire-building conflicts as well. Weights and Measures officers were unhappy initially about having Video Recordings Act provisions enforcement imposed on them. They will surely be doubly unhappy about these proposed new measures. The NCROPA certainly is and urges that they be withdrawn forthwith.

The proposed extension of the jurisdiction of magistrates' courts for the purpose of facilitating the proposals in this Section 67 discussed above, must, consequently, be similarly rejected by the NCROPA . That the territorial integrity of magistrates' courts (as defined by the Magistrates' Court Act 1980) should be violated by this unprecedented measure, merely to help to facilitate the 'gestapo-like' enforcement of outrageously vicious State censorship laws, is as constitutionally unsound as it is shameful. It is quite unnecessary and this proposed measure should, likewise, be withdrawn.

In November 1983, in its considered Critique of the then Video Recordings Bill, the NCROPA expressed its belief that that Bill was a measure "of outrageously authoritarian proportions which will erode individual freedom and the freedom of expression in a way the likes of which are unprecedented in this country in modern times". We went on to state that we rejected the Bill outright and we recommended "that it be scrapped and replaced by a voluntary code of video classification." Ten years after the Bill became the Video Recordings Act 1984, everything we feared about the implementation of the provisions of the Bill has been realised. Video censorship in this country is, without doubt, the most draconian of the whole of the Western-World. The NCROPA vehemently rejected the Video Recordings Act in 1984 and we just as vehemently reject it now - and with it, of course, these additional proposed Section 67 measures.

Section 67 (1)

- Delete the whole clause (for reasons given above)

Section 67 (2)

- Delete the whole clause (for reasons given above)

Section 67 (3)

- Delete the whole clause (for reasons given above)

SECTION 68

(Obscene, offensive or annoying telephone calls)

This Section increases the penalties available to the Courts for, according to Section 43 (1) of the Telecommunications Act 1984:-

> "A person who -
>
> (a) sends, by means of a public telecommunications system, a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
>
> (b) sends by those means, for the purpose of causing annoyance, inconvenience or needless anxiety to another, a message that he knows to be false or persistently makes use for that purpose of a public telecommunication system".

It introduces the additional new penalty of imprisonment for this offence.

Whilst the NCROPA deplores the improper use of the public telecommunications system by those who make offensive and/or menacing telephone calls of an unsolicited nature, it also strongly deprecates the imposition of any restrictions on the content of any telephone call which is made without formal objection and/or complaint, which is made with free mutual consent or which is deliberately solicited (e.g. the '0898' telephone services). If people consentingly wish

to make or receive or exchange telephone calls of an "indecent" or "obscene" character (whatever those terms may mean!), they should be free to do so. Any measures designed to prevent them from so doing, including the imposition of legal penalties, are not only yet another manifestation of improper State censorship, but also a gross invasion of personal privacy. The kind of intolerable restrictions imposed on the providers of and callers to '0898' telephone numbers by frighteningly authoritarian bodies like the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS) established under the framework of the law, alongside the restrictive measures applicable to telephone usage generally and with which this Section 68 is concerned, are unheard of in most other free-world countries. Again, in a supposedly 'free society' like ours, the NCROPA believes we should not have them here also.

Furthermore, before rushing to slam prison sentences on those rightly convicted of offences under the Telecommunications Act 1984 (i.e. only those who offend in the unacceptable way we have specified), the NCROPA believes we should first of all again consider very carefully the remarks made by Lord Carr and Lord Justice Woolf about the abandoned use of prison sentences for non-violent, non-serious crimes (see page 8); and secondly afford proper priority to changing our present 'nannyish' telecommunications legislation so that people can choose to express themselves and communicate on the telephone in whatever way they wish, as long as sufficient safeguards (the most minimal possible) are retained for potential victims of the kind of telephone abuser we have here identified.

The NCROPA is not convinced that the proposal in this Section 68, as it presently stands, and without any additional provision for the NCROPA's demands set out above, would serve any significant or useful purpose and it cannot thus be accepted.

Section 68 (1)

- Delete the whole clause (for the reasons given above).

CONCLUSION

In presenting the Criminal Justice and Public Order Bill (1993) to the House of Commons for its Second Reading debate on 11th January, the Home Secretary, Michael Howard, M.P., said that it had "a very clear purpose: to assist in the fight against crime and protect the public." In any civilised society the "fight against crime" is to be applauded and endorsed, and the NCROPA naturally subscribes to that. However, when behaviour and activities are designated as 'crimes' which, rightfully, ought not to be 'crimes' at all, such a fight becomes untenable and unsustainable. Part VII of this Bill, concerned as it is with so-called "obscenity and pornography and videos", introduces proposed legislation addressed solely to the strengthening and tightening of existing laws which criminalise certain behaviour and activities but which, in the NCROPA's view, should never have been so criminalised in the first place. Such legislation is thus also untenable and morally unsustainable.

It was clear from the sanctimonious, moral rhetoric spewed out by some members of the Government, including the Prime Minister, at the Conservative Party Annual Conference in Blackpool last October that such fundamental principles as basic human rights, including that most precious one of 'freedom of expression', which is the crux of the matter in this crucial area of law-making, were to be jettisoned willy-nilly in the interests of appeasing the baying bigots and hypocrites of the party's extreme right-wing, and, yet again, poor old harmless "pornography" was to be pilloried as the root cause of all of society's - and the Conservative Party's - 'law and order' ills and problems. The inclusion of these Part VII proposals therefore conveniently provides a facile accommodation in the Bill of the time-serving sentiments expressed in those nauseating Blackpool outbursts of cynical, toadying, moral rhetoric.

With regard to the Home Secretary's other "clear purpose" for the Bill - viz to "protect the public" - most members of the British public are heartily sick of the 'nannyist' policies pursued by both present and past Governments in this country which claim to "protect" the people from their own inadequate selves. The present Government more than any before it, is hell-bent on imposing ever more restrictive and repressive prohibitions which grossly intrude on personal morality and individual choice. The Government has no business interferring in people's sexual pursuits, habits or proclivities, or in their right to see, read and hear sexually-explicit material (a much more accurate term than "pornography" or "obscenity" or "indecency") if they so choose, just so long as there is no coercion involved either in the production or consumption of such material. The Government is constantly proclaiming its great aim is to get the State off people's backs and allow them freedom of individual choice, but almost fanatically and quite inconsistently, at the same time is increasing State sexual censorship in a world which, elsewhere, has largely abandoned it. Its obsessive, peculiarly British pre-occupation with matters-sexual has well and truly manifested itself in Part VII of this Bill. As we have shown, none of its five Sections (64 to 68) contain any justifiable and relevant improvements to the existing laws they purport positively to enhance, notwithstanding that, for the most part, those existing laws are themselves seriously flawed or even completely indefensible. Not one of these new proposals (in Sections 64 to 68) will, if enacted into law, in any way assist in "the fight against crime" - real crime, that is - as the Home Secretary claims, and they will only "protect the public" from that which the public does not want to be protected against, not by the 'nanny-state', at least.

These proposed measures in Part VII of the Bill are unnecessary, unwanted, inappropriate and, above all, irrelevant. They should all be rejected and abandoned - like the vast majority of the United Kingdom's 'obscene' State censorship legislative measures. That really would be a "Back to Basics" policy worth pursuing - and everlastingly relevant!

National Campaign for the Reform of the Obscene Publications Acts (NCROPA), 15 Sloane Court West, Chelsea, London, SW3 4TD
Tel: 071-730 9537

February 1994

(5) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding ten years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(6) This section applies to vessels, aircraft and vehicles as it applies to premises.

Unlawful collection, etc. of information.

16B.—(1) No person shall, without lawful authority or reasonable excuse (the proof of which lies on him)—

(a) collect or record any information which is of such a nature as is likely to be useful to terrorists in planning or carrying out any act of violence; or

(b) have in his possession any record or document containing any such information as is mentioned in paragraph (a) above.

(2) In subsection (1) above the reference to recording information includes a reference to recording it by means of photography or by any other means.

(3) Any person who contravenes this section is guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding ten years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(4) The court by or before which a person is convicted of an offence under this section may order the forfeiture of any record or document mentioned in subsection (1) above which is found in his possession."

(2) For the purposes of section 27 of the Prevention of Terrorism (Temporary Provisions) Act 1989 (temporary provisions), the provisions constituting Part IVA of that Act inserted by this section shall be treated, as from the time when those provisions come into force, as having been continued in force by the order under subsection (6) of that section which has effect at that time. 1989 c. 4.

(3) This section shall come into force at the end of the period of two months beginning with the date on which this Act is passed.

PART VII

OBSCENITY AND PORNOGRAPHY AND VIDEOS

Obscene publications and indecent photographs of children

Indecent pseudo-photographs of children. 1978 c.37.

64.—(1) The Protection of Children Act 1978 shall be amended as provided in subsections (2) to (4) below.

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(2) In section 1 (which penalises the taking and distribution of indecent photographs of children and related acts)—

(a) in paragraph (a) of subsection (1)—

(i) after the word "taken" there shall be inserted the words "or to make", and the words following "child" shall be omitted;

(ii) after the word "photograph" there shall be inserted the words "or pseudo-photograph";

(b) in paragraphs (b), (c) and (d) of subsection (1), after the word "photographs" there shall be inserted the words "or pseudo-photographs";

(c) in subsection (2), after the word "photograph" there shall be inserted the words "or pseudo-photograph"; and

(d) in paragraphs (a) and (b) of subsection (4), after the word "photographs" there shall be inserted the words "or pseudo-photographs".

(3) In section 7 (interpretation)—

(a) in subsection (3), at the end, there shall be inserted the words "and so as respects pseudo-photographs"; and

(b) for subsection (4) there shall be substituted the following subsection—

"(4) References to a photograph include—

(a) the negative as well as the positive version; and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph."

(c) after subsection (5) there shall be inserted the following subsections—

"(6) "Child", subject to subsection (8), means a person under the age of 16.

(7) "Pseudo-photograph" means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph.

(8) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Act as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.

(9) References to an indecent pseudo-photograph include—

(a) a copy of an indecent pseudo-photograph; and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph".

1988 c. 33.

(4) Section 160 of the Criminal Justice Act 1988 (which penalises the possession of indecent photographs of children) shall be amended as follows—

(a) in subsection (1), after the word "photograph" there shall be inserted the words "or pseudo-photograph" and the words from "(meaning" to "16)" shall be omitted; and

(b) in paragraphs (a), (b) and (c) of subsection (2), after the word "photograph" there shall be inserted the words "or pseudo-photograph".

(5) The Civic Government (Scotland) Act 1982 shall be amended as provided in subsections (6) and (7) below. 1982 c. 45.

(6) In section 52 (which, for Scotland, penalises the taking and distribution of indecent photographs of children and related acts)—

(a) in paragraph (a) of subsection (1)—

(i) after the word "taken" there shall be inserted the words "or makes"; and

(ii) for the words from "of a" to the end there shall be substituted the words "or pseudo-photograph of a child";

(b) in paragraphs (b), (c) and (d) of subsection (1), after the word "photograph" there shall be inserted the words "or pseudo-photograph";

(c) in subsection (2), at the beginning there shall be inserted "In subsection (1) above "child" means, subject to subsection (2B) below, a person under the age of 16; and";

(d) after subsection (2), there shall be added—

"(2A) In this section, "pseudo-photograph" means an image, whether produced by computer-graphics or otherwise howsoever, which appears to be a photograph.

(2B) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Act as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.

(2C) In this section, references to an indecent pseudo-photograph include—

(a) a copy of an indecent pseudo-photograph; and

(b) data which, being stored on a computer disc or by other electronic means, is capable of conversion into a pseudo-photograph."; and

(e) in subsection (4), and in paragraphs (a) and (b) of subsection (5), after the word "photograph" there shall be inserted the words "or pseudo-photograph"; and

(f) for subsection (8)(c) there shall be substituted—

"(c) references to a photograph include—

(i) the negative as well as the positive version; and

(ii) data which, being stored electronically, is capable of conversion into a photograph.".

(7) In section 52A (which, for Scotland, penalises the possession of indecent photographs of children)—

(a) in subsection (1), for the words from "of a" to "16)" there shall be substituted the words "or pseudo-photograph of a child";

(b) in subsection (2), in each of paragraphs (a) to (c), after the word "photograph" there shall be inserted the words "or pseudo-photograph";

(c) in subsection (3)—

(i) after the word "to" there shall be inserted the words "imprisonment for a period not exceeding 3 months or to"; and

(ii) at the end there shall be added the words "or to both:";

(d) in subsection (4), after the word "(2)" there shall be inserted the words "to (2C)".

Arrestable offences to include certain offences relating to obscenity or indecency.

1984 c.60.

1959 c.66.

1978 c.37.

65.—(1) The Police and Criminal Evidence Act 1984 shall be amended as follows.

(2) In section 24(2) (arrestable offences), after paragraph (e), there shall be inserted the following paragraphs—

"(f) an offence under section 2 of the Obscene Publications Act 1959 (publication of obscene matter);

(g) an offence under section 1 of the Protection of Children Act 1978 (indecent photographs and pseudo-photographs of children)."

(3) At the end of Part II of Schedule 5 (serious arrestable offences mentioned in section 116(2)(b)) there shall be inserted the following paragraphs—

"Protection of Children Act 1978 (c. 37.)

14. Section 1 (indecent photographs and pseudo-photographs of children).

Obscene Publications Act 1959 (c.66.)

15. Section 2 (publication of obscene matter)."

Indecent photographs of children: sentence of imprisonment.

1988 c. 33.

66. In section 160(3) of the Criminal Justice Act 1988 (which makes a person convicted of certain offences relating to indecent photographs of children liable to a fine not exceeding level 5 on the standard scale) there shall be inserted after the word "to" the words "imprisonment for a term not exceeding three months or" and at the end the words ", or both".

Extended enforcement of Video Recordings Act 1984

Enforcement by enforcing authorities outside their areas.

1984 c. 33.

67.—(1) The Video Recordings Act 1984 shall have effect with the following amendments.

(2) In section 16A (enforcement)—

(a) after subsection (1) there shall be inserted the following subsections—

"(1A) Subject to subsection (1B) below, the functions of a local weights and measures authority shall also include the investigation and prosecution outside their area of offences under this Act suspected to be linked to their area as well as the investigation outside their area of offences suspected to have been committed within it.

(1B) The functions available to an authority under subsection (1A) above shall not be exercisable in relation to any circumstances suspected to have arisen within the area of another local weights and measures authority without the consent of that authority."

(b) in subsection (4), for the words "Subsection (1)" there shall be substituted the words "Subsections (1) and (1A)".

(c) after subsection (4), there shall be inserted the following subsection—

"(4A) For the purposes of subsections (1A), (1B) and (2) above—

(a) offences in another area are "linked" to the area of a local weights and measures authority if—

(i) the supply or possession of video recordings in contravention of this Act within their area is likely to be or to have been the result of the supply or possession of those recordings in the other area; or

(ii) the supply or possession of video recordings in contravention of this Act in the other area is likely to be or to have been the result of the supply or possession of those recordings in their area;

(b) "investigation" includes the exercise of the powers conferred by sections 27 and 28 of the Trade Descriptions Act 1968 as applied by subsection (2) above; 1968 c.29.

and sections 29 and 33 of that Act shall apply accordingly."

(3) After section 16A there shall be inserted the following sections—

"Extension of jurisdiction of magistrates' courts in linked cases.

16B.—(1) A justice of the peace for an area to which section 1 of the Magistrates' Courts Act 1980 applies may issue a summons or warrant under and in accordance with that section as respects an offence under this Act committed or suspected of having been committed outside the area for which he acts if it appears to the justice that the offence is linked to the supply or possession of video recordings within the area for which he acts. 1980 c. 43.

(2) Where a person charged with an offence under this Act appears or is brought before a magistrates' court in answer to a summons issued by virtue of subsection (1) above, or under a warrant issued under subsection (1) above, the court shall have jurisdiction to try the offence.

(3) For the purposes of this section an offence is "linked" to the area for which a justice acts if—

(a) the supply or possession of video recordings within his area is likely to be or to have been the result of the supply or possession of those recordings in the other area; or

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(b) the supply or possession of video recordings within the other area is likely to be or to have been the result of the supply or possession of those recordings in his area.

(4) In this section in its application to Northern Ireland, for any reference to a justice of the peace for an area to which section 1 of the Magistrates' Courts Act 1980 applies there shall be substituted a reference to a resident magistrate sitting in a petty sessions district.

1975 c.21.

Extension of jurisdiction of sheriff in linked cases.

16C.—(1) Subsection (4) of section 287 of the Criminal Procedure (Scotland) Act 1975 (jurisdiction of sheriff as respects offences committed in more than one district) shall apply in respect of linked offences as that subsection applies in respect of offences committed in more than one sheriff court district which, if committed in one of those districts, could be tried under one complaint.

(2) For the purposes of subsection (1) above, an offence is a linked offence if the supply or possession of video recordings within one sheriff court district is likely to be or to have been the result of the supply or possession of those recordings in another such district."

Obscene, offensive or annoying telephone calls

Obscene, offensive or annoying telephone calls: increase in penalty.

1984 c. 12.

68.—(1) In section 43(1) of the Telecommunications Act 1984 (which makes a person convicted of certain offences relating to improper use of public telecommunication systems liable to a fine not exceeding level 3 on the standard scale), for the words "a fine not exceeding level 3 on the standard scale" there shall be substituted the words "imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale or both".

PART VIII

PRISON SERVICES AND THE PRISON SERVICE

CHAPTER I

ENGLAND AND WALES

Prisoner escorts

Arrangements for the provision of prisoner escorts.

1991 c.53.

69.—(1) In subsection (1) of section 80 (arrangements for the provision of prisoner escorts) of the Criminal Justice Act 1991 ("the 1991 Act")—

(a) for paragraph (a) there shall be substituted the following paragraph—

"(a) the delivery of prisoners from one set of relevant premises to another;";

(b) in paragraph (b), for the words "such premises" there shall be substituted the words "the premises of any court"; and

(c) for paragraphs (c) and (d) there shall be substituted the following paragraph—

"(c) the custody of prisoners temporarily held in a prison in the course of delivery from one prison to another; and".

APPENDIX B

NATIONAL CAMPAIGN FOR THE REFORM OF THE OBSCENE PUBLICATIONS ACTS

(NCROPA)

MEMORANDUM TO THE HOUSE OF COMMONS HOME AFFAIRS COMMITTEE
INQUIRY INTO COMPUTER "PORNOGRAPHY"

Terms of Reference

'What particular problems are caused by the use of information technology to generate or disseminate obscene (including grossly violent) material (including computer games); what additional problems are likely from developing information technologies; whether any changes in legislation, including the law relating to obscene publications, are necessary to deal with existing and potential concerns relating to computer pornography; what particular difficulties are encountered by the police and other authorities in detecting and prosecuting computer pornographers; and what co-operation is possible in this area between European Community states and more widely internationally.'

Note on Terms of Reference

No meaningful and accurate comment is possible on this issue without the Committee's terms of reference, as set out above, being more clearly and unambiguously defined. In particular, for the purposes of your inquiry, the terms "pornography" and "obscene" need to be more precisely defined, since both are generally much abused and so indiscrimately, often inaccurately and irresponsibly used.

The use of the term "pornography" is, we feel, unfortunate, because the concept of "pornography" per se exists nowhere in British law and thus has no legal validity. (The term does appear in the pre-

amble only to the Obscene Publications Act 1959, but nowhere in the the Act proper and nowhere else in British statute law). For the purposes of this memorandum, therefore, we will assume that the Committee intends "pornography" to mean 'sexually explicit material', and the terminology preferred by the NCROPA.

Bald reference to "obscene" material is similarly fraught with difficulty in such a memorandum. The concept of 'obscenity' is inevitably a highly subjective one. What is "obscene" to one person is nothing of the kind to another and any reference to an "obscene" article is thus devoid of any real and precise meaning. This is why antiquated pieces of legislation like, for example, the Customs Consolidation Act of 1876, which uses the undefined term "obscene", are so deplorably absurd. However, the 1959 Obscene Publications Act is no better, even though a vain attempt was made in this Act to define 'obscenity' by incorporating the fatuous 'deprave and corrupt' test. These twin concepts of 'depravity' and 'corruption' are as meaningless and unquantifiable as 'obscenity'. As Professor R.M. Jackson (Downing Professor of the Laws of England, University of Cambridge) said in his evidence to the 1968 Arts Council Working Party on the Obscene Publications Acts[1]

> "The supposed depravity and corruption produced by obscene articles is a matter of conjecture. No hard evidence can be put forward, for nobody can demonstrate that anybody has ever been depraved or corrupted by a particular obscene article. A decision that an article would have such a tendency is based entirely upon opinion unsupported by verifiable facts."

It is thus no wonder that in 'obscenity' trials jury verdicts vary so widely from case to case and court to court, even when identical material is being adjudicated on. This does not mean we are critical of jury trials in 'obscenity' cases (or, for that matter, in any other cases), but rather that the trials should not take place at all. They should not take place because, in a 'free society', the law should have no place in determining what consenting adults are allowed to see, read and hear, whether deemed offensive or "obscene" by others or not. The only exception to this would be where

1 - "The Obscenity Laws", pub. Andre Deutsch 1969 - p.16

coercion was used in the production of explicit material. This proviso would thus obviously proscribe the use of children (who are not of sufficiently mature mind to make a conscious decision themselves as to whether or not they would wish to participate and they could not, therefore, be deemed capable of giving their consent), and also the incurred infliction of real physical harm on any of the participants involved. (Real physical harm should not, however, include the type of minor, 'invited' injuries which featured in the ridiculous prosecutions of the "Operation Spanner" case (Old Bailey 19th December 1990), none of which required professional medical attention or were inflicted under duress or unconsentingly - however bizarre such activities may seem to many).

The Questions Posed

The questions set out in the Committee's 'terms of reference' appear to be based on the premise that (a) it is right and proper that 'pornographic'/'obscene'/'sexually-explicit' publications should be proscribed by law, and (b) that our present laws which impose such proscription are also right and proper, albeit perhaps nowadays ineffective to fulfil that function entirely satisfactorily. It will be clear from the foregoing introduction to this memorandum that we most certainly do not accept that premise.

The National Campaign for the Reform of the Obscene Publications Acts (NCROPA) was founded 17½ years ago specifically to campaign for the (even then) long overdue, drastic, liberalising reform of the U.K.'s out-moded and draconian repressive censorship laws, most particularly those imposing censorship of sexual material. At the heart of these unjust and unjustifiable laws were the iniquitous Obscene Publications Acts which effectively afforded 'nanny' State the means of dictating to British citizens that which they were allowed to see and have, and that which they were not. These Acts manifested - and shamefully still do today - the kind of authoritarianism the United Kingdom would normally be expected unequivocally and categorically to condemn in other less 'civilised' and undemocratic societies. Yet today even former totalitarian régimes of ex-communist bloc countries - like Romania, Hungary, Czechoslovakia, East Germany - and former fascist dictatorships - like Spain and Portugal - have discarded their erstwhile ruthless state censorship laws and have now well overtaken the

ever and increasingly repressive United Kingdom in implementing and extending true 'freedom of expression' - including sexual expression - even what some may deem "obscene" sexual expression - to their people. The continued existence of our present 'obscenity' laws is a grave indictment against this supposedly 'free' country and a national disgrace.

Therefore, in response to the Committee's question regarding "What particular problems are caused by the use of information technology to generate or disseminate obscene (including grossly violent) material (including computer games)", our answer is 'none' - just as no particular problems are caused by the use of any other medium or technology in generating or disseminating "obscene" (sexualy and/or violently explicit) material. The only attendant problems in so doing are those created, almost solely in this country, by our unique, irrelevant, unjust and unnecessary proscriptive censorship legislation.

No incontravertible evidence exists and none has ever been produced, that the exposure to sexually and/or violently explicit material, whether in books, in films, on television, in videos - or in computer games, is, in itself, harmful. In the words of author Anthony Burgess ("The Clockwork Orange"),

> "Neither cinema nor literature can be blamed for original sin. A man who kills his uncle cannot justifiably blame a performance of 'Hamlet'."

All the major, credible world investigations into such material and the impact of its free availability have reached the same conclusion, which is that it is basically harmless. Included in these is the U.K.'s own distinguished Home Office "Report of the Committee on Obscenity and Film Censorship"[2] (The Williams Committee), and more recently the Home Office Research and Planning Unit's Review "Pornography: impacts and influences"[3]. Both of these U.K. Government investigations have been systematically 'rubbished' by those pro-censorship bodies and factions who, having been unable to combat the intellectual argument, have quite disgracefully resorted to the desperate tactics of irrational and hysterical scare-mongers to arouse dangerous and raw base emotions.

2 - pub. HMSO 1979, Cmnd 7772

3 - Howitt & Cumberbatch, Home Research & Planning Unit 1990

Even more disgraceful, however, is the 'rubbishing' of these distinguished reports by successive U.K. Governments themselves - their own reports! - and their complete refusal either to accept their findings or to act on them.

The most commonly articulated justification for 'censoring' anything in this increasingly-regulated, censor-obsessed country, is that we have to protect the children. This pre-supposes, of course, that children would be 'in danger' or 'at risk' if sexually and/or violently explicit material is not 'censored'. We do not accept that this is so. Whilst we accept that some parents (or guardians) may choose to shield their children from such material whilst under their control and supervision, and that they certainly have the right to bring up their children in this way if they so wish, the fulfilment of that desire is in their own hands. They must exercise appropriate parental control by not affording or permitting their children access to books and magazines they disapprove of, to films and videos they disapprove of - and, if necessary, to telephones and computers, and computer hardware and software which is capable of disseminating material they disapprove of - including computer games.

Such an expectation of parents is not ridiculous or extreme. Society expects, for example, that parents who smoke tobacco will not permit their children access to their cigarettes or pipes. Parents who have alcoholic drinks in their homes are expected not to permit access by their children to whisky-macs and gin-and-tonics. Society expects - nay, demands - that children are not permitted access to poisonous substances and potentially dangerous articles in the home like matches, or kitchen knives. The imposition of such discipline by parents is taken for granted and in cases where it is not imposed and where society deems that as the result of such parents' irresponsibility their children are 'in danger' or 'at risk', society legally and properly intervenes. Why should the same criterion not be applied to 'sexually and/or violently explicit material' - however it is packaged and in whatever medium - including the medium of the computer? The issue is not whether or not something is or is not "obscene" or "pornographic". It is whether or not parents (or guardians) are exercising proper parental control and supervision regarding that 'something'. It is not a Broadcasting Standards

Council - nor a Computer Standards Council - this country needs, but a 'Parenting Standards Council'.

In anticipation of the come-back outcry from our opponents that this may be fine where children have responsible and conscientious parents and/or guardians but that, sadly, many do not, we can only question what real harm would be caused to a child accidentally exposed to sexually and/or violently explicit material and reiterate our contention that the answer is virtually none. We would suggest, for example, that by and large there would be no more harm caused to the child than that caused by a schoolboy's furtive glimpses of a "Health and Efficiency" magazine behind the cricket pavilion. It simply part of life and part of growing up.

In a critical letter to H.R.H. The Prince of Wales, shortly after he had made a controversial speech about the violent content of U.K. television programmes, at the opening of the Museum of the Moving Image on 15th September 1988, David Webb, the NCROPA's honorary director, wrote the following. It is very relevant to this inquiry:-

> " .... the notion that images shown on a television or cinema screen have this extraordinary, exclusively all-powerful effect on people's behaviour, which your outburst claimed, is simply untrue. No-one is denying that screen images of all kinds have some effect on people's subsequent outlook and behaviour, as indeed does any publication or communication, but they merely constitute a tiny part of all the multitude of influences and phenomena which contribute to moulding and shaping our lives, attitudes and thinking. By far the greatest influence is that of parents and parental upbringing. As I wrote in a letter published in "The Independent" on 16th September last year, the impact of television on the viewer is not one of unqualified and unchallenged persuasiveness. Television images certainly publicise, familiarise and inform the viewer, but that in no way ensures or compels approval or acceptance, or even any positive effect one way or the other of such images or ideas suggested by them. The concept that anything shown on

> a television or cinema screen is automatically and uncontrollably desired or imitated may be the advertising industry's 'pipe-dream', but it is, in reality, a myth. A much more plausible and valid theory is surely that whatever is screened that is violent, unpleasant or distasteful will provoke aversion. Moreover the argument that children are at risk, even if adults are not, is also grossly over-stated. Children are perfectly capable of differentiating between fantasy and reality and are not nearly as vulnerable as many adults and censor-fanatics would have us believe. To blame television and the cinema for all of society's ills is irrational, unintelligent and, frankly, absurd. The belief that a blanket ban on all screen violence would have any significant effect on the level of violent behaviour in society is fanciful and fallacious and a pathetically simplistic solution to a highly complex problem."

The arrival of the new computer technologies to which the Committee's inquiry is addressed pose no new threat either to adults or to children. Furthermore, access to computer technology requires know-how, appropriate equipment and facilities (e.g. space, telephones, etc.) and, above all, considerable expenditure. None of these requirements would normally be readily available to children without substantial parental finance and backing - and thus, by implication, approval. If parents are concerned that their children might abuse, or be abused by any computer facilities they will almost certainly initially have to provide, they must simply not so provide.

The United Kingdom is one of the few remaining supposedly 'free-world' countries which still ruthlessly and repressively operates state sexual censorship. However, very many other countries throughout the world do not thus subject their citizens to such harsh restraints and therefore, consistently, do not proscribe explicit material in computer format any more than in any other format, and, incidentally, with no harmful or problematical results. With the right equipment and knowledge, computer technology covers the world and is universally accessible. Short of having a policeman from the Obscene Publications Squad posted on surveillance duty in every computer-equipped home in the land (a chillingly Orwellian thought if ever there was one!), the U.K. is virtually powerless to regulate

the content of what is transmitted via this medium, let alone prohibit it. It is really time the British Government 'got real' on this issue, got into line with all these other sensible countries, and ceased trying. Contrary to the mindless but predictable rantings of the 'puritan brigade', it will not mean the disintegration of our whole fabric of society any more than it did of theirs.

The NCROPA does not believe and does not accept that sexually and/or violently explicit material, whether in 'computer' or indeed any other form, poses any real danger to children, even though its campaign is essentially concerned with achieving the legal availability of such material for consenting adults.

However, even supposing that such explicit material is potentially harmful to children (which we do not), there are countless products in any modern society which are potentially harmful to children but which are not banned for all, including adults. Alcohol and tobacco, both of which bring in millions of pounds worth of essential revenue for the Government each year, are two such potentially harmful commodities - indeed, even potentially lethal commodities (not only for children but for all!). Yet these are not banned. Glue solvents, household matches (already mentioned), kitchen implements - even the indispensable motor vehicle - are just a few examples of a myriad of products which pose a potential danger especially to children. Yet no right-minded person would seriously suggest that any of them should be banned outright simply because they are (not might be) capable of causing children harm. True, society may sometimes regulate their supply or impose strict conditions of sale, but they are still permitted to be freely available to those adults who want them. Government controls and the 'nanny-state' can, and generally, do go only so far. Thereafter society rightly expects adults to behave responsibily regarding the use of these commodities (viz the implementation of responsible parental and/or guardian control) even though allowing the exercise of free will and freedom of adult choice. Why shouldn't the same criteria be applied to sexually explicit material (or "pornography")?

We do not share the Committee's implied assertion (in the 'terms of reference') that "existing and potential concerns relating to computer pornography" are significant or widespread. It is true that

there have been outbursts from a few Members of Parliament expressing concern, but these have originated from predictable, unsurprising sources and from well-known pro-censorship, grundyist activists. Frank Cook, the Labour M.P. for Stockton North is one such M.P. and his ludicrous and hysterical proclamation in a BBC2 "DEF II Reportage" programme that "Computer pornography is tantamount to the injection of heroin into a child's school milk", clearly demonstrates the kind of O.T.T. emotive clap-trap that the very vociferous anti-porn/ pro-censorship lobby is so fond of disseminating, but which does nothing to justify or advance their arguments. This DEF II television programme is one of the few so far transmitted on this topic which have, rather hysterically, attempted to incite public outrage but with little substantive evidence of a problem, complete lack of balanced reporting and thus little impact.

Even more revealing of the news media's deceptions and distortions in drumming up 'a good story', is the recently much reported case of the alleged widespread circulation of computer 'porn' disks at a Dunstable (Bedfordshire) school. A senior Luton police officer was interviewed on television to pre-empt any Crown Prosecution Service decision and to boast about their haul of 754 "pornographic disks"; and to pontificate about such evil and gloat about the cracking of a major schools' computer disk 'porn-ring'. It now transpires, however, that <u>all</u> 754 of the seized disks have turned out to be "clean" and have had to be returned to their owners. The whole investigation is reputed to have been sparked off by one pupil's mother commenting to a "News of the World" reporter. On the basis of this story, no doubt there are many who would have us believe that there is a veritable deluge of such computer material swamping our nation's schools. It is typical of the sort of stuff that the ban-all censor-freaks love and with which they can hopefully incite parliamentary action. We trust that the Home Affairs Committee will pay no heed to them.

As far as we are concerned there is no 'problem' with computer "pornography", just as there is no 'problem' with "pornography" in other formats. This means, of course, that no changes are required in legislation - <u>other than the drastic, comprehensive, liberalising reform of the U.K.'s censorship laws, with the virtual repeal of the</u>

kingpin of these iniquitous pieces of legislation, viz the Obscene Publications Act 1959. This would be generally in line with the recommendations of the Williams Committee - still ignored after 14 years! - and would bring some semblance of sanity, tolerance, freedom and justice to this contentious area of the law in this country, as such action so widely elsewhere in the 'free-world' has brought to all those populations.

That police officers should need to be concerning themselves with "detecting and prosecuting computer pornographers" at all - or indeed, any other "pornographers" (except those in the unacceptable category we have already discussed in this Memorandum), is disgraceful, especially when there is such an upsurge of 'real' crime in this country, most of it unchecked and undetected, when most police forces are still considerably under strength and when curbs on public spending are constantly being implored to combat the nation's huge deficit. Having made this crucial point, we are bound to add that computer "pornography", if and when detected, is as much subject to the present 'obscenity' legislation as any other material. There have already been some convictions in the courts for the publication of allegedly "obscene" material in computer-form. Naturally we regret this and, if the NCROPA's aspirations are fulfilled, such prosecutions would, generally, not be possible.

Finally it is difficult to envisage any co-operation with the U.K. being "possible in this area between European Community States and more widely internationally" when and where these foreign countries are not plagued with the singular, narrow, 'fuddy-duddy' British approach to "pornography", and where such material is (rightly in our view) freely and legally available and thus freely and legally disseminated - by computer technology or any other means.

For our part, and the millions of British citizens who think like us, we earnestly hope that no co-operation will be afforded the U.K. Government in this or any other area concerning the imposition of State censorship, whilst the U.K. Government stubbornly refuses to grow up and throw off its archaic and anachronistic puritanism. The NCROPA is already doing all it can to urge our fellow Member States of the European Community to make no concessions to the U.K. and to insist that it fully adheres to all its E.C. agreements and commitments -

especially those concerning the removal of all trade and cross-border barriers, and barriers to the full enjoyment of 'freedom of expression'. We shall continue and increase this pressure.

In conclusion, this is not an issue about the efficacy of modern computer technology, nor its uses and abuses in isolation, and nor can it be. The fundamental issue here is that of 'freedom of expression'.

The United Kingdom's present draconian censorship laws are a gross affront to freedom in this late-20th-Century world, when virtually all other nations of the so-called 'free world' have finally dispensed with such harsh, restrictive measures, and where their populations are free to choose for themselves what they see, read and hear.

Enshrined in both the United Nations Universal Declaration of Human Rights (1948) and the European Convention on Human Rights (1950) is the right to 'freedom of expression', regardless of frontiers. The United Kingdom is an originating signatory to both these great Charters of freedom. Shamefully she has still yet to implement her commitment to those Charters fully, by continuing, quite unjustifiably, to curtail 'freedom of expression' rights in Britain. This presently also includes, of course, the curtailment of 'freedom of expression' via the medium of the computer. Any such restriction, apart from the justifiable restrictions we have herein already detailed, are unacceptable. They should be removed rather than strengthened or increased. That is the approach to "computer pornography" the NCROPA follows, the approach we would like to see implemented and the approach we commend to your Committee.

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October 1993