

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 indiscriminately, 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 Acts¹

"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 erst-while 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" (sexually 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 incontrovertible 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.

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 responsibly 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 all 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 - other than the drastic, comprehensive, liberalising reform of the U.K.'s censorship laws, with the virtual repeal of the

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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