

# PORNOGRAPHY

**G**ALOP RECEIVES VERY FEW CALLS ABOUT PORNOGRAPHY. IN THE YEAR TO MARCH 1990, WE HAD 4 CALLS FROM GAY MEN WHO HAD FACED CHARGES OR HAD BEEN THREATENED WITH CHARGES RELATING TO PORNOGRAPHY. THAT REPRESENTS LESS THAN 1% OF OUR TOTAL CASEWORK CALLS; UNDER 0.5 % OF OUR TOTAL CALLS. BUT THIS DOES NOT MEAN THAT PORNOGRAPHY IS UNIMPORTANT EITHER TO GALOP OR TO GAY MEN IN GENERAL; RATHER IT REFLECTS PORN'S CURIOUS LEGAL STATUS AND OUR OWN AMBIVALENCE TOWARDS IT. PORN IS SOMETHING MOST OF US KEEP QUIET ABOUT, INCREASINGLY TO OUR COST.

It is not actually against the law to own pornography, with the exception of child pornography. It is, however, illegal to do many of the things which enable one to own porn. Various statutes make it a crime to publish obscene material or to distribute, display, send through the post or import obscene or indecent material. Further, the Video Recordings Act, 1984 (VRA), makes the production of lesbian or gay porn videos in this country almost impossible since their distribution and sale would be illegal. Pre-recorded videos may only be sold openly if they have received a certificate from the British Board of Film Classification (BBFC).

The legal definition of pornography adds to the confusion by not existing. Instead, sexually explicit material is judged by the tests of obscenity or indecency. The least stringent test, the test of obscenity, derives from the Obscene Publications Act, 1959 (OPA). Material is judged to be obscene if, taken as a whole, its effect is to tend to "deprave and corrupt" a significant proportion of those people likely to see it. This means that, say, a passage from a book cannot be taken out of context in order to condemn the whole work. It can also be argued that the material in question is intended for a particular audience and so cannot harm those who choose to avoid it. Moreover, the Act allows a public good defence, whereby material can be judged to have artistic, scientific, educational or other merit beyond mere depravity and corruption. For all that, the Act allows the police and courts a considerable degree of discretion.

The law does not define what does deprave and corrupt and what doesn't. The police and the judiciary, to a large extent, make the definitions up as they go along: the police by virtue of what material they prosecute and what they don't; the courts by their individual judgements. The same applies to the test of indecency. Again, indecency is not

defined as such. Instead, the law relies on a "common sense" understanding of the term. Put simply, indecent material is something which would embarrass or offend a "reasonable" person. Here there is no public good defence; nor does it matter if the material in question is only meant for "unreasonable" people. If the police or the courts feel that the material is beyond the bounds of "common decency", then it stands condemned.

In practice, most written material published in this country is left alone by the law. If imported from abroad, HM Customs & Excise may choose to confiscate it. In the past decade, there have been a large number of Customs raids on lesbian and gay bookshops, that on London's Gay's the Word in 1984 being the most well known. The collapse of the Customs case against Gay's the Word, following a European Community Court of Justice ruling, means that written material imported from EEC countries can only legitimately be seized by Customs Officers if it would attract a prosecution under the OPA. These days, unless they contain explicit images, have no literary pretension whatever or if they advocate illegal activities, books are not touched by the law.

Visual representations, however, are treated far more harshly. Lesbian or gay porn videos, as we have seen, are effectively outlawed by the 1984 Video Recordings Act. Even films which are granted an 18R certificate - which restricts them to screenings at film festivals, in private clubs or licensed sex cinemas - occupy a grey area in the light of a recent judgement. In 1990, a Birmingham video shop lost all its 18R-rated videos following forfeiture proceedings under the OPA.

Still images are censored too. Nudity is permissible provided that the male erection is not portrayed. Which explains why many of the men in gay magazines available in this country have large grey or black blobs instead of a penis. Ejaculation, oral and anal sex are similarly beyond the pale. Even those gay magazines which contain provocatively-posed but limp models or pictures of sexual activity with the interesting bits blanked out can only be sold in strictly regulated circumstances. If general newsagents want to stock such magazines - and most don't - they are supposed to be displayed in a specially marked-off section of the shop (Indecent Displays (Control) Act, 1981). In practice, this means the top shelf. Otherwise, shops must obtain a special licence to operate as a sex shop (Local Government (Miscellaneous Provisions) Act, 1982 and Civic Government (Scotland) Act, 1982). This means that the shop must be sited in an area considered suitable

by the local authority, that it must not have any window display and that there must be a sign over the door advising that the shop sells material which may offend and that only persons over the age of 18 may enter

Another recent case has shown that the laws relating to indecent display cast a wide net. In 1990, a novelty shop in London's Covent Garden was raided by the police and all the penis-shaped items in stock were seized - chocolate willies, clockwork willies, penis-shaped soap, a clock with a dick-shaped pendulum and so on. The shop was prosecuted under Indecent Displays legislation and fined. But there is a twist in this tale. A leading tabloid newspaper ran an article which ridiculed the officer in charge of the raid. He sued and won damages of £25,000. The police and courts clearly take indecency very seriously indeed.

It is not just businesses which receive the attentions of the law. Individuals are regularly prosecuted by Customs Officers. Searches and on-the-spot fines at ports and airports are the most common actions. But individuals have also had their homes raided, as happened to Film Studies lecturer Richard Dyer, and their mail intercepted, as happened to gay artist, the late Philip Core, and to lesbian author, Jenny White amongst many, many others. Dyer got back most of the material which was confiscated. Core (though he sadly died while the trial was in progress) lost his case and forfeited the material in question which included a signed copy of Tom of Finland's Retrospective, a book of drawings also published in this country. White's case is to be heard in April 1991.

Individuals may also come under suspicion by merely owning a quantity of pornography. In England and Wales, the police may consider that this constitutes "intent to distribute or supply" obscene or indecent material. (In Scotland, the obscenity laws are more clearly drawn: actual distribution or supply must be proven; also, distribution amongst the members of a private club is not illegal provided that a third party is not unwittingly involved.) One of our callers had just such an experience, though, thankfully, he escaped prosecution. The police searched his premises and discovered some gay magazines. They threatened to prosecute him unless he could supply them with information relating to a case against another gay man. He convinced them that he had nothing to tell them and they left. There have also been instances, on lesbian or gay demonstrations, of police objecting to the images on some people's T-shirts.

"Obscenity...is not a fixed or certain idea." (Paul Crane,

Gays & The Law, Pluto Press, 1982) "The basic problem with any obscenity law which applies a legal test to methods of expression is that it calls for a judgement of opinion rather than a finding of fact." (Geoffrey Robertson, Freedom, The Individual and the Law, Penguin, 1989) Current legal opinion is that almost any explicit visual representation of homosexuality is either obscene or indecent. This provides the police and the judiciary with another stick with which to beat us. We are judged obscene and indecent even though there is no law which actually says so. Instead, policing practice and the weight of judgements over the years has decided thus. Pornography is a difficult subject for most people to talk about. Whichever way one turns, there is someone who will condemn it as harmful or immoral. Most of us, therefore, choose to keep quiet.

We are back at the beginning and silence. GALOP, as in the case of cottaging, takes no moral position with regards to pornography. We do, however, consider the way in which the law is operated to be inappropriate and dangerous. We cannot accept that gay sex should be condemned as obscene for that condemns us as well. As with cottaging cases, most people do not contest obscenity or indecency cases for fear of adverse publicity and because they do not expect to receive any support. The judgements of the Obscene Publications Squad (OPS) about what is and what isn't obscene or indecent enjoy society's tacit approval. But on what moral or indeed legal basis are their judgements founded? Mary Whitehouse is fond of declaring, "as the Obscene Publications Squad told me..." That she is told what she wants to hear is worrying. For the priorities of the OPS and their fellows throughout the country largely determine what is permissible and what isn't.

But the position is not hopeless. GALOP is interested to hear from people who have had trouble about their ownership of pornography. We believe that such cases can be fought. We intend to seek meetings with the Obscene Publications Squad in the coming year to raise our concerns with them. We will not hesitate to raise the matter in appropriate forums. The Home Office has commissioned an academic report on the effects of pornography. Press reports suggest that its findings will be that there is no evidence that pornography causes significant harm. This is an opening that we do not intend to miss.

