

Pornography Regulation, Legislation and Enforcement

DSIT [Call for Evidence](#) (Published 11 January 2024)

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Introduction

1. Our submission contributes **empirical evidence** addressing two aspects in the scope of the pornography review: first, the effectiveness of the criminal justice system's response to tackling extreme pornographic content from a prosecutorial angle; and second, prevailing societal attitudes towards pornography.
2. We first explain how we gathered our evidence (paras 3-8) and continue with an overview of our findings on both aspects (i.e., paras 9-13 concern prosecutorial decision-making in extreme pornography cases and paras 14-17 concern the impact of news media on public perceptions of extreme pornography).

The source of our evidence

3. We are the authors of the [Rise of Extreme Porn](#), published by Palgrave MacMillan in 2017. Our empirical study was **the first to address the lack of comprehensive research into the interpretation and practical application** of the criminal offence of possession of extreme pornographic images, i.e., explicit, realistic, and obscene depictions of rape, life-threatening injury, necrophilia, bestiality and serious injury to the anus, breasts and genitals (Criminal Justice and Immigration Act 2008, sections 63-68).
4. In particular, the study provided **a snapshot of the practical implementation of the provisions** in England & Wales¹ by reviewing prosecutorial decision-making in a sample of 16 case files involving extreme pornography offences. It explored the thresholds of extreme pornography that emerged where prosecutors in the sample studied were satisfied that there was sufficient evidence to provide a realistic prospect of conviction.
5. The case files were drawn from **four different Crown Prosecution Service (CPS) areas**: London, South East, West Midlands and Wales. The sample size of 16 case files and the limit of four areas were determined by the CPS. The areas were chosen on the basis that they could supply relevant files and were diverse both in terms of their caseloads and geography (metropolitan/non-metropolitan). The review was facilitated by the then CPS Strategy and

¹ The 2008 Act also applies to Northern Ireland, but for the Scottish equivalent offences, see section 42 of the Criminal Justice and Licensing (Scotland) Act 2010, amending section 51 of the Civic Government (Scotland) Act 1982 on obscene material.

Policy Directorate and the agreed arrangement was for the files to be studied at the CPS headquarters in London.

6. Of note, our study predates the 2015 amendment to the 2008 Act (by section 37 of the Criminal Justice and Courts Act 2015) which expanded the scope of the offence to include images depicting rape and assault by penetration. Our sample of case files did not encompass such content.
7. Our research also shed light on the wide socio-cultural context within which the extreme porn offence came into being, highlighting the key role of contemporary news media in reflecting but also shaping public attitudes towards extreme pornography. Through an **in-depth qualitative analysis of 251 relevant news articles**, our study explored the different stages of through which the public concerns over extreme pornography emerged, amplified and eventually translated into policy.

CPS case files review: overview of our findings

8. Determining the boundaries of the extreme pornography offence proved controversial in several of the CPS case files reviewed. This aligns with broader concerns about determining what content specifically falls within the scope of the offence, resulting in few prosecutions; see also CPS, *Violence Against Women and Girls Report 2018–19* (CPS 2019) A53. Our findings map onto the core elements that need to be met under the Code for Crown Prosecutors (the [Full Code](#) Test) before a prosecution is brought: the evidential test (there must be a ‘realistic prospect of conviction’); and, the public interest test (the prosecution must be ‘in the public interest’).
9. **Where extreme pornography offences were charged alongside other statutory offences** that involved allegations of some gravity, most notably offences related to child sexual abuse and exploitation material, evidential considerations primarily centred on issues concerning the principal offences. Prosecutors tended to be satisfied that a prosecution was evidently required and appeared less inclined to put extreme pornographic images under strict scrutiny. There were also few signs in such cases that public interest considerations pertaining to extreme pornography offences arose in the decision-making process. The severity of the principal charges prevailed over other considerations and arguably weakened the application of the Code for Crown Prosecutors in relation to extreme porn offences.
10. **Where extreme pornography offences stood by themselves**, the discussion of the evidential requirements in prosecutors’ charging decisions most commonly centred on the more technical aspect of ‘possession’, while the nature of the images themselves became the subject of very limited analysis. Particularly in relation to ‘life-threatening’ or ‘serious injury’ images, there was little evidence to suggest that prosecutorial decisions aligned strictly with defined evidential criteria. Factors favouring prosecutions in the public interest, as required by the Prosecutors’ Code, typically included cursory references to the ‘nature’ and/or ‘seriousness’ of the offences at issue.
11. With the exception of images depicting bestiality (the identification and detection of which is comparatively straightforward), there remained significant uncertainty in determining whether an image fell within the ‘life-threatening’ or ‘serious injury’ category. Our analysis found that there was often a mismatch between the level of severity of harm envisaged by the statute’s wording, and the lesser degree of harm that seemed to prompt prosecutions. As a

result, the boundary between obscene material - that is *illegal to publish but legal to possess* - and extreme material - that is *illegal to publish and illegal to possess* - was frequently indistinct. **This makes the law unclear and uncertain, raising concerns about possible wrongful convictions.**

12. It should be recognised that the 16 case files reviewed are not statistically representative of CPS caseloads, nor of all cases concerning extreme pornography. Consequently, the decision-making exemplified by this sample does not necessarily reflect general CPS practice. It is also conceded that documents in these files might not have fully reflected the information available to prosecutors during decision-making. For instance, verbal briefings or consultations with investigators at charging appointments might not have been adequately captured in a paper case file and were therefore unavailable for consideration.

Impact of media on public attitudes towards pornography: overview of our findings

13. We also thoroughly analysed 251 pertinent news articles from the British national press to understand how public perceptions of extreme pornography were represented in and informed by media debates.
14. We looked extensively at the news coverage surrounding Jane Longhurst's murder (which triggered the discussions around the criminalisation of extreme pornography), and particularly at the emphasis placed on the perpetrator's (Graham Coutts') alleged fascination with extreme pornography. **The heightened media attention undoubtedly played a pivotal role in elevating the issue onto the public agenda.** Numerous articles delved into the circumstances of Longhurst's death, documenting Coutts' arrest, trial, conviction, appeal, retrial and subsequent re-conviction. They also highlighted the campaigning led by the victim's mother, (Liz Longhurst) against extreme pornography.
15. Our analysis showed that the extensive and prolonged media reporting on the Longhurst case significantly amplified public anxieties over extreme pornography. The reporting presented the murder as being driven by the perpetrator's fixation with extreme online porn, linking it to a pervasive problem of an 'Evil Web' endangering women and children. **This sensationalised framing added to the perceived urgency and newsworthiness of the issue.** News reports employed powerful language and imagery which largely urged the public to vilify Coutts. The offender was demonised through various labels which established his 'otherness' (among others being referred to as 'subhuman', 'perverted monster' or 'folk devil').
16. Journalists covering Longhurst's case didn't just report; they conducted a parallel trial in the 'court of public opinion', often bypassing formal legal procedures for their own version of justice. **This media trial capitalised on moral outrage, criticising the perceived leniency and ineffectiveness of the criminal justice system.** To compensate for the then Government's alleged unwillingness to effectively regulate the Internet, newspapers like the *Mail on Sunday* became actively involved in what was seen as a righteous fight against 'foul, sadistic and brutal' pornographic content.
17. The dominant media narrative painted extreme porn as an online scourge to be urgently addressed, often overshadowing concerns about censorship or the lack of concrete evidence

linking pornography to real-life violence. **Overall, the media coverage at the time was unhelpful.** It heightened fears but stifled a nuanced and measured debate necessary for crafting clearer and more effective targeting mechanisms.

7 March 2024