



*CAAN ACTION NOTICE: -  
Please distribute this notice as widely  
as possible.*

### **Three years of CJIA 2008. We were proven right !**

Pretty much everything we said would go wrong with S63 CJIA 2008 has gone wrong. We said it was ill-informed, it failed the evidenced based policy test, it would criminalise harmless people, it would criminalise those who make a simple error of judgment and it would serve to further the state's hate campaign against sexual minorities - and it has.

With the arrival of the new Con-Dem administration in May 2010 CAAN has attempted to establish if government might be willing to repeal this legislation or at least consider limiting the scope of its application by issuing properly defined guidance, which excludes consensual BDSM activities from the scope of the legislation. Many feel that the label "extreme pornography" ought to refer to acts which are of themselves illegal to perform but some lawful BDSM activities may fall foul of the law.

Sadly that is not to be. Government has made it clear it has no appetite to be branded as 'pro-porn' by sections of the media by repealing this dreadful legislation.

For the last three years anti-censorship campaigner, Jon Fuller, has been trying to get clarity on the precise meaning of S63 (7)(b). You may recall that this provision says "an act which results or is likely to result in serious injury to a person's anus, breasts or genitals". So what, you might ask, does that mean? Is a tattoo a serious injury, because it is permanent, is a 'Prince Albert' body piercing a serious injury, because it entails bleeding and may cause a permanent scar? So Jon asked. He didn't just ask once, he kept on asking. He asked the Ministry of Justice (MoJ) and the Crown Prosecution Service (CPS), when the legislation first came into force and he asked again in 2011, after the new Con-Dem administration had ample time to set its agenda on contentious issues.

You would think this would be a simple question but no. Neither MoJ nor CPS would say if the possession of an image depicting a 'Prince Albert' or a nipple piercing was illegal to possess. Clearly an answer to this question

might depend upon the circumstances involved in the portrayal in the image.

For example a medical depiction of the process of acquiring a 'Prince Albert' piercing might be viewed very differently to a BDSM session, depicting heavy S&M play. Despite repeated protestation, the best CPS could offer Jon was that he should seek the advice of a lawyer !

It seems incredible that neither CPS nor MoJ know, or are willing to say, whether it is illegal to possess images depicting nipple or genital body piercings. Hundreds of thousands of people have body piercings every year so obviously huge numbers of people are going to want to know what it involves and look on-line. Here was proof that the state was refusing to help people to keep out of trouble. Despite the appalling consequences of a conviction (sex offenders register, imprisonment, loss of work, loss of a home life, loss of family) the state made it abundantly clear that it would not provide clarity, nor would it provide publicity to ensure vulnerable groups are equipped to make informed decisions.

Perhaps the state will utterly destroy your life, perhaps it won't. It simply hasn't decided yet ! And that, we argue, is unfair, unjust, inhuman and, significantly, it is unlawful.

Here is a link to the CPS guidance: - [http://www.cps.gov.uk/legal/d\\_to\\_g/e xtreme\\_pornography/](http://www.cps.gov.uk/legal/d_to_g/e xtreme_pornography/)

## **Do you agree it is time for legal action?**

**We have to end this now !**

Many organisations challenge legislation or a governmental decision by Judicial Review but this normally has to be initiated within 3 months of a particular decision. It may be that we are out of time to pursue this option but we have sought advice on this question. Another option is to take a case against government under Human Rights legislation. But again there is a time limit - 1 year from the realisation that government action or legislation would breach an individual's human rights.

If we are out of time then we can pursue this through The European Court of Human Rights. However this final option can be extremely slow, during which time the state will continue to destroy the lives of many hundreds of people. Seeking professional legal advice is therefore important, because it was not immediately clear to what extent the state would apply and misuse the legislation. It is only 3 years down the line that we can see how poorly the legislation is working and the extent to which the public remain in complete ignorance or doubt as to its meaning.

We have sought advice on the legal and financial implications but we want you to give this serious thought now. Would you be willing to join the legal action, named with others in the

proceedings? And/or would you be willing to contribute to a fighting fund to challenge CJIA S63 (7)(a) and (b)? To either strike down the legislation or, at least, ensure that it only relates to non-consensual material?

If you would then please contact Jon now at: [BDSMJustice@hotmail.co.uk](mailto:BDSMJustice@hotmail.co.uk)

## The story so far...

Here is a summary of the emerging case against S63 (7)(b) CJIA 2008: -

Government Ministers promised Parliament that very few cases would be prosecuted because only the most extreme material would be targeted. The CPS guidance indicates that legal BDSM activities are included, which runs counter to Parliament's wish to target only the very most extreme imagery (ECHR: Articles 8, 10 & 14 - privacy, expression and discrimination).

Parliament was led to believe that clear guidance would be given to the public. It has not. The application and scope of the legislation is unlawful because the guidance and practice does not accord with Parliament's wishes (ECHR: Articles 8, 10 & 14 - privacy, expression and discrimination).

It is wholly unreasonable to expect uninformed members of the public to understand their responsibilities when the state refuses to publish clear,

specific guidance (ECHR: Article 6: Fair trial).

This law amounts to a breach of natural justice in that it is impossible for defendants to have a fair, objective trial (ECHR: Article 6: Fair trial).

Given the extreme scale of the penalties it is unreasonable of the state to refuse to provide clear education to vulnerable groups like young adults. It is often argued that ignorance of the law is no excuse, but when government refuses publicity and education, it deliberately makes the law unclear and yet makes the penalties so extreme, the courts have a duty to require that the guidance be made explicit and clear (ECHR: Article 6: Fair trial)

**It is discriminatory 1.** It appears to outlaw possession of some BDSM erotica/porn, despite the fact that the actions being portrayed are not in themselves illegal (the state seeks to impose greater restrictions upon BDSM than it does upon non-sexual violent material. Examples of non-sexual violence/activity where the individual can consent to harm are mentioned below under "*Is this discrimination on the grounds of sexual orientation?*" (ECHR: Articles 8, 10 & 14 - privacy, expression and discrimination). .

**It is discriminatory 2.** The legislation appears to single out consensual BDSM sex, even where this is within

the parameters of the law. The law criminalises possession of images relating to necrophilia and bestiality, both of which are illegal to perform. But the state does not criminalise images which are usually illegal to perform, for example, acts of public sex. (ECHR: Articles 8, 10 & 14 - privacy, expression and discrimination)

The state says it will determine guilt or innocence on a "case by case basis". This is wholly unreasonable given the refusal to provide clarity and guidance, and given the devastating implications for the individual if that person were to make a simple error of judgment. (ECHR: Article 6: Fair trial)

The European Court of Justice has previously permitted nation states to determine such matters, on the grounds of public health and morals; but this legislation has forced people to contemplate suicide and runs counter to an important moral code held dear by the public at large - that legislation must be fair. This legislation is manifestly unfair in that it is deliberately unclear, it is not being publicised, young adults are not being educated about the implications and yet the penalties are severe. On this basis it is reasonable to expect the courts to conclude that clear and specific guidance must be given by CPS/MoJ.

## Conclusion

The state may or may not destroy our lives; it won't tell us even when we ask, even when we ask repeatedly; the state may choose to destroy us tomorrow or in several years time, it simply has not decided yet. And that is monstrous and monstrously unfair.

## What else do we know?

As of late 2011 the Ministry of Justice (MoJ) only had information relating to the number of convictions in 2010. It took a good deal of perseverance with that department to establish that in 2010 there were 57 convictions for possession under S63. Of these 9 were for possession under S63(7)(b) (serious injury to anus, breasts or genitals) and 48 were for possession under S63(7)(d) (bestiality). There were no prosecutions under S63(7)(a) (life threatening) and 63(7)(c) (necrophilia). A recent meeting with Backlash campaigners suggested that the numbers prosecuted in 2011 may be much higher. But, crucially, Backlash states that very many more people are being trapped by the legislation and being coerced into accepting a caution rather than face the much harder consequences of trial and conviction. We have not as yet been able to verify the number of cautions but some work suggests this is well into thousands of cases.

We are aware that a question was recently posed to the Crown Prosecution Service (CPS) under Freedom of Information legislation to obtain information on the decision making process relating to prosecutions under S63. Sadly [cps rejected the request](#) on the grounds of the excessive cost associated with obtaining the information sought.

[http://www.cps.gov.uk/publications/docs/foi\\_disclosures/2012/disclosure\\_2.pdf](http://www.cps.gov.uk/publications/docs/foi_disclosures/2012/disclosure_2.pdf)

Work continues to try to establish the number of people being charged, cautioned, prosecuted and convicted under CJIA 2008 but by now the CPS and MoJ ought to be in a position to let people know exactly what they can and cannot do. But they refuse to update their guidance and refuse to educate the public on what has emerged.

We need to challenge this and, if CPS/MoJ will not relent, we need to challenge this in the courts. A powerful argument to use is that The CPS guidance ought to reflect the position taken by Parliament: -

- That the legislation did not represent an attack upon the BDSM community;
- That clear guidance would be given;
- That only the most extreme material would be prosecuted; and

- Very small numbers would be prosecuted (an indication was given of no more than 30 people).

We can argue that CPS guidance amounts to an attack upon the BDSM community and others by refusing clear guidance relating to breath control, body piercings and other consensual acts. The CPS refuses to make it clear where the dividing lines are between non-extreme and extreme material lay, even though that body must by now have a clearer idea of what it will/will not prosecute. That position is wholly unreasonable and must be challenged..

### **Censorship takes a beating**

If you don't know about the Michael Peacock case you need to know. This could well be a turning point for those of us opposed to the state's hate campaign against people who dare to be different. So please take time to read the following articles on the case and consider its implications: -

First - The Guardian: -

<http://www.guardian.co.uk/law/2012/jan/07/obscene-publications-act-future-doubt>

Next - the blog from the defence (Myles Jackman): -

<http://obscenitylawyer.blogspot.com/>

Finally our New Statesman friend,  
David Allen Green: -

<http://www.newstatesman.com/blogs/david-allen-green/2012/01/crown-court-prosecution>

While thinking about the injustice at the heart of the CPS. Here is an article by our very own Jane Fae on the CPS: : [An Obscene Disregard for Justice](#)

<http://www.freedominapuritanage.co.uk/?p=2203>

The key point to remember here is that this case does not make a precedent, only appeal courts do that, but it sends a strong signal to the enforcement agencies that the public can be a lot more tolerant and do not generally support the persecution of people for what they do in private - and that includes viewing pornography. Perhaps there has never been a better time to push the state back on S63 CJIA 2008 and demand that consensual BDSM activities must be excluded from the definition of 'extreme porn'.

### **Is this discrimination on the grounds of sexual orientation?**

For many in the BDSM scene S&M is a fundamental part of their life. They feel that S&M is a core part of their personality, so fundamental that they

describe it as being akin to their orientation. One BDSM blogger describes her feelings of submission as going back to a period of childhood before her gender sexual orientation became fixed. She describes a time when she loved playing doctors and nurses or cowboys and Indians, not caring which side she was on, as long as she was the one restrained and tormented before eventual release. For some, feelings of submission and masochism run so deep that they are core parts of personality. Many will argue that this is akin to orientation but Dr Charles Moser takes this further.

<http://www2.hu-berlin.de/sexology/BIB/SM.htm>

Dr Charles Moser has concluded that, for some, BDSM is akin to sexual orientation in that it cannot be cured and it cannot be changed. If that is right what are the implications of this? Certainly there must be a stronger case to argue in law against discrimination? What do you think? Do you feel that there are strengths in this approach or might there be dangers? As always we would welcome your views.

Jon Fuller is one of those who argues that this may be a killer argument in the fight to blunt what he sees as a state campaign of hate against the BDSM community. Jon argues that the state ought to think about other areas of activity where adults can consent to danger or bodily harm. A

quick canter through the breadth of human behaviour reveals that the state permits people to engage in mixed martial arts, in boxing, in cage fighting, even on occasion in bare knuckle fighting and bloody circus acts. The state permits us to have certain body modifications, including tattooing, body piercing and even "Prince Alberts". The state also permits people to have controversial forms of cosmetic surgery, for example vaginoplasty. Then we have other areas of real difficulty; areas which most of us would agree are sensitive and difficult to address or codify into law. Examples would include: -

- Parliament's acceptance of parental physical discipline of children - despite the fact this is virtually always non-consensual;
- Parliament's acceptance of male circumcision shortly after birth on religious and cultural grounds - and obviously a baby cannot give consent.
- The universal agreement that the state should not prosecute people who self harm or those who attempt suicide; and
- Parliament's acceptance of self flagellation and other acts that can cause permanent scarring during religious rituals (mortification of the flesh, etc.).

However the state does not currently appear to permit BDSM acts, if they

exceed the "transient and trifling" threshold. If a sexual act exceeds this threshold you could go to prison. But if it exceeds this threshold, is life threatening, or causes all manner of permanent visible scars and other injuries, provided it is not sexual, you will probably be fine. It is indeed ironic that the law should be more perverse than those it seeks to persecute.

Jon argues that if BDSM is "who you are" and it is a core part of your personality, then under ECHR the state has no right to discriminate against you, imposing restricts and sanctions, often severe sanctions, which are far greater than those applied to other groups. He argues that it is discriminatory to place greater restrictions upon the BDSM community than are applied to other sections of society, it is discriminatory to refuse to tell that community exactly what it cannot do, treating each situation "on a case by case basis", it is downright callous to refuse to tell people what they can safely look at when the penalties for breaking the law are so extreme and it is wholly unreasonable to the point of being perverse to suggest that the services of a lawyer need to be sought before an individual can decide when it is permissible to retain an erotic image.

Please tell us what you think. If you are into S&M and feel that this is a core part of your personality we would

love to hear your opinions on the question of "orientation".

**We warned this law might create harmless criminals!**

While the focus of this newsletter is upon S63(7)(a) and (b) it is important to remember that the legislation relating to the possession of images of bestiality is doing more harm than good. The infamous "Tiger Porn" trial shows that perfectly 'normal' and harmless people are being prosecuted for doing nothing more sinister than circulating crude jokes. Read on: -

<http://www.dailypost.co.uk/news/north-wales-news/2010/01/01/north-wales-man-cleared-as-tiger-porn-clip-revealed-as-joke-55578-25503981/>

**Deletion of dangerous Pictures**

Issue a reminder: - Backlash have formulated [a rather good guide](#) on how to delete 'extreme porn' from computers.

## CAAN – Scotland

It has been some time since CAAN - Scotland has put out a newsletter, and while we apologise for the radio silence, the good news is that things don't suck quite as much as they did a couple of years ago. Attacks on legal adult activities such as pornography, BDSM, prostitution and lap dancing have decreased since the Extreme Pornography law came into force in March 2011. The attacks that have come (mainly against prostitution) have been brief and unsuccessful. CAAN - Scotland has been plugging along, completing a Freedom of Information Request relating to the Extreme Pornography law. We hope to become more active in Hollyrood in the coming year so that we can better keep on top of legislation and news relating to sexual freedoms.

If you have information regarding any of the topics we have been following, or developments on new fronts, and would like to share it with others, please get in touch.

If you are in need of assistance on one of these topics, again please get in touch, because if we can't help you, we probably know someone who can.

If you are a lawyer or have experience with the Scottish legal system and would like to be on hand for legal advice, please get in touch; we would love your perspective on these issues.

We encourage all people who believe in sexual freedom to follow issues, write

to your government, and take action in whatever way you can.

### Extreme Pornography

The Criminal Justice and Licensing (Scotland) Act 2010 (<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/16193.aspx>) was given royal assent on 6 August 2010. It came into effect on 28 March 2011. The amendments against lap dancing and prostitution were rejected.

CAAN-Scotland completed a Freedom of Information Request to obtain evidence to outline the development of the law, demonstrate public opinion of the law, and reveal why the Scottish Executive thought it was legal. Numerous documents were released dating back to 2003 showing that after the announcement of the Consultation on Extreme Pornography (2005)

(<http://www.scotland.gov.uk/Topics/Justice/crimes/pornography/ExtremePornographicMateria>) more and more people wrote in to their MSPs against the law. Documents relating to the Short Life Working Group on Extreme Pornography were also released, as were responses to the Revitalising Justice announcement in 2008 (<http://www.scotland.gov.uk/Publications/2008/09/24132838/4>). An attempt was made to obtain the evidence backing up the Scottish Executive's claim that this law is compatible with ECHR

(<http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>), but this was withheld under legal privilege (<http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2012/201101173.asp>). And nothing beats legal privilege. These documents have been released on the CAAN website.

For general information regarding the law and your legal rights, we urge people to reference the Backlash website with its many resources. The only thing to be aware of is that the Scottish version includes rape as an image which is banned, and the definition of harm is widened to "is likely to result".

We do not know how many cases have been brought under this law, so we do not know what sort of precedent is being set in terms of types of images to be convicted. If you are aware of any cases, please report them to CAAN so that we may investigate and see what sort of images are likely to land you on the Sex Offenders list.

If you are under investigation for images under the extreme pornography law, please get in contact with us immediately so that we may advise and assist as we are able.

## Prostitution

The attacks on prostitution in Scotland continue, but they also continue to be rebutted. The failed amendment to criminalise the sale and

purchase of sex during stage 2 of the CJLB

([http://www.scottish.parliament.uk/S3\\_Bills/Criminal%20Justice%20and%20Licensing%20%28Scotland%29%20Bill/b24s3-stage2-g1.pdf](http://www.scottish.parliament.uk/S3_Bills/Criminal%20Justice%20and%20Licensing%20%28Scotland%29%20Bill/b24s3-stage2-g1.pdf)) was just

the tip of the iceberg. Trish Godman brought forward an extremely biased consultation in 2011 for a law to criminalise prostitution ("analysis" here:

[http://www.scottish.parliament.uk/S3\\_MembersBills/Final%20proposals/20110316consultationreponsesummaryFinal.pdf](http://www.scottish.parliament.uk/S3_MembersBills/Final%20proposals/20110316consultationreponsesummaryFinal.pdf)). Parliament broke before the law could be debated, but it was

recently resurrected by Rhoda Grant (<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/51148.aspx>).

Fortunately, MSPs came out against the proposed law, including champion Margo MacDonald. In local matters, City Councillor Joanna Mowat recently commented on prostitution and saunas in Edinburgh - and came out on the side of sexual freedom! CAAN Scotland will be on the lookout for developments, but you can read more at our website on these topics.

## Lap Dancing

Lap Dancing has also suffered a number of attacks over the past few years, but it seems to have come out intact. The lap dancing amendment was quickly cut down in the debates in stage 2 of the CJLB

([http://www.scottish.parliament.uk/S3\\_Bills/Criminal%20Justice%20and%20Licensing%20%28Scotland%29%20](http://www.scottish.parliament.uk/S3_Bills/Criminal%20Justice%20and%20Licensing%20%28Scotland%29%20)

[Bill/b24s3-stage2-g3.pdf](#)) when a submission pointed out that the definition was vague enough to include prostitution, and they had already decided they weren't going to ban prostitution ([http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=5507&mode=html#iob\\_49267](http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=5507&mode=html#iob_49267)). The amendment was dropped. But CAAN suspects that this will not be the last attack on lap dancing.

out in favour of banning Lads Mags, just "keeping them out of children's sight", so CAAN has no position on this other than caution against banning the mags simply because of sexual content. The ghettoisation of sex continues.

## Lads Mags

Hearty thanks go out to the Scottish Women Against Pornography (SWAP) for their tenacity in continuing to pressure the Scottish Executive against the oh-so-scandalous-and-dangerous world of "Lads Mags" (e.g. *Nuts* and *Zoo*). They've been pursuing this silly little cause since 2008 with their petition PE1169 (inner giggle), and government has been loath to act on it

(<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/40017.aspx>). First they wanted to wait until the Papadopoulos Report on the Sexualisation of Young People ([http://www.wrc.org.uk/includes/documents/cm\\_docs/2010/s/sexualisation\\_youngpeople.pdf](http://www.wrc.org.uk/includes/documents/cm_docs/2010/s/sexualisation_youngpeople.pdf)) came out. Then they commissioned their own miniscule research (practically anecdote!) ([http://www.scottish.parliament.uk/S3\\_PublicPetitionsCommittee/Submissions\\_11/Research\\_report\\_final.pdf](http://www.scottish.parliament.uk/S3_PublicPetitionsCommittee/Submissions_11/Research_report_final.pdf)) to see if there was a problem in Scotland. So far SWAP has not come

## OTHER CAAN NEWS

### Open Rights Group petition to stop government snooping.

Those concerned by government plans to intercept and snoop upon e-mails and other electronic traffic may want to sign this petition: -

<http://www.openrightsgroup.org/>

<http://action.openrightsgroup.org/ea-campaign/clientcampaign.do?ea.client.id=1422&ea.campaign.id=8227>

### E-petition on No 10 site.

This may be a little 'off-topic' but we suspect many will have sympathy with this e-petition. This calls for "freedom for adults to make informed viewing choices after 9pm" and we ask that you consider give this your support: -

<http://epetitions.direct.gov.uk/petitions/13222>

## HELP NEEDED

As we move closer to the pursuit of justice through legal action we will need volunteer researchers more than ever. If you would be willing to help with specific mini-projects please would contact us.

## USEFUL LINKS

### CAAN's Statement:

*"We believe in the right of consenting adults to make their own sexual choices, in respect of what they do, see and enjoy alone or with other consenting adults, unhindered and unfettered by government."*

*"We believe that it is not the business of government to intrude into the sex lives of consenting adults."*

If you'd like to support this simple notion, please Sign Up  
<http://www.caan.org.uk/sign.php>

CJIA clauses which criminalise extreme pornography: <http://www.uk-legislation.hmso.gov.uk/acts/acts2...>

### Government guidance:

<http://www.justice.gov.uk/docs/extreme-pornograp..>

Backlash - legal advice upon arrest:  
<http://www.informedconsent.co.uk/posts/219063/>

And for keeping up to date with anti-censorship issues  
[www.melonfarmers.co.uk](http://www.melonfarmers.co.uk)