

**Wilson J (Jim)**

**From:**  
**Sent:** 01 October 2008 18:55  
**To:** Criminal Justice and Licensing Bill  
**Subject:** Possession of extreme pornography section

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Dear Scottish Government,

Reading the section of the new Criminal Justice and Licensing Bill (CJLB), the section on Possession of Extreme Pornography seems to me unclear to the point of being useless. The main issue with the bill is that it threatens the harmless entertainment of a portion of the Scottish population, those who are kinky, into BDSM, fetish, or any other form on non-mainstream sexuality. While I recognise that this bill was proposed to help reduce the number of people forced into pornography and to protect children from viewing pornography, this bill hardly accomplishes those purposes and instead vilifies individuals who are harming no one.

The main problem with the bill is the phrase "realistically depict". While most of the wordings of the bill do not threaten the entertainment and home photos/movies of law abiding Scottish residents, the term "realistically" allows the media in question not to be judged on its own merit, but instead on the gut reactions of whomever happens to be viewing it.

Take, for example, the phrase "appear likely to cause severe injury". One common form of play in BDSM is bondage. While bondage is typically quite harmless, in the wrong hands a rope too tight across the wrists could cut off circulation to the hands. Conversely, a master of bondage could easily tie someone up in very tight ropes over their entire body and still not harm them. How are we, the viewer of this media, to know the skill level of the person performing the act? Many dangerous sports and work carry the phrase "only to be attempted by professionals", surely this applies to BDSM as well. A person may be seriously injured sky diving if they don't know what they're doing, yet a skilled person would be perfectly safe. There is no way to tell from looking at a picture.

The same applies to acts such as "Rape and other non- consensual penetrative sexual activity, whether violent or otherwise". As was commented on the Register, [http://www.theregister.co.uk/2008/09/30/scotland\\_extreme\\_pr0n\\_law/](http://www.theregister.co.uk/2008/09/30/scotland_extreme_pr0n_law/) , "How exactly are they planning on telling the difference between non-consensual, non-violent sex and consensual non-violent sex \*just\* \*by\* \*looking\* \*at\* \*a\* \*picture\* ?" Nobody argues that documenting a rape is a crime, but unless it is proved that the rape occurred, there is no proof that the photo (or what have you) is depicting a rape. Further, completely consensual activity (such as BDSM) may be misconstrued as rape simply because the person looking at the media does not have the full information. Is there a difference between consensual violent sex and non-consensual non-violent sex? Again, it goes back to "realistically depict".

Obviously the best solution would be to remove this section from the bill entirely. But I realise that many religious and feminist groups may object strenuously to that. They argue that crimes should not be documented. In that case, just say, a documentation of a sex crime is a crime in itself. Rape is already illegal in Scotland (though I understand the issue of male rape hasn't yet been addressed in law). Strengthen those laws before you commit yourself to vague nonsense that may affect art and otherwise law abiding residents. If they want to ban pornography, ban ALL pornography, starting with Page 3 girls. The CJLB will only cause confusion, prejudice and injustice.

Sincerely yours,