

## Trustees

Derek Cohen (Secretary)  
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# the SPANNER TRUST

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Consultation on Possession of Extreme Pornography  
Criminal Law Policy Unit  
2<sup>nd</sup> Floor, Fry Building  
2 Marsham Street  
London  
SW1P 4DF

Dear Sir/Madam,

### **Response to the Consultation: On the possession of extreme pornographic material**

The Spanner Trust was formed about ten and a half years ago to provide legal and other assistance to the men who were being prosecuted for having consensual BDSM sex with each other which caused no harm to themselves or to others. (R. v. Brown and Others (1992) 94 Cr.App. R 302 CA; [1994] 1 AC 212 HL.) The further objects of the Trust are to campaign to reverse the law which was created by that case and to assist generally men and women who are persecuted by the law for engaging in consensual activity which does no harm to themselves and no harm to others or to society in general.

The Trust is dismayed that it is proposed to create a criminal offence which, as with the "Spanner law", will criminalise activity which does not cause anyone or society any harm. This is openly admitted in the Consultation document at paragraph 31 and we do commend the candour with which this statement was made. On that basis, there can be no justification for creating this new criminal offence.

For the avoidance of doubt, may I make it clear that the Trust only supports **consensual** activity and as children and animals will always lack the legal capacity to consent then any activity involving them can **never** be supported or condoned in any way and the present law relating to images of children is absolutely right.

The Trustees considered that the creation of such an offence would be a breach of Articles 8 & 10 of the ECHR (contrary to the statement made at paragraph 57) and arranged to obtain a legal Opinion from Rabinder Singh QC. His conclusion was that the legislation as proposed gave rise to real concerns as to its compatibility with an individual's rights under Articles 8 & 10 of the Convention. A copy of his Opinion is annexed hereto.

We hope that the Government will conclude that the creation of such an offence is both unnecessary and undesirable but, if legislation does create such offence, then the Trust will seek a declaration under Section 7 of the Human Rights Act 1998 in the High Court.

Yours faithfully,

John Pandal  
Chairman  
The Spanner Trust