

perjute
27/10/06

TARLYN HONSON:

SUBMISSION ON THE SEXUAL OFFENCES BILL

CONTENTS

INTRODUCTION

- 1) DEFINITIONS
- 2) BESTIALITY (S 12)
- 3) EXPOSURE TO PORNOGRAPHY (S 17 A AND 24 A)
- 4) ADDITIONAL PROVISION ON UNINTENTIONAL SEXUAL GROOMING (S 17)
- 5) ADDITIONAL PROVISION ON ADVERTISING OF ILLEGAL SEXUAL SERVICES

INTRODUCTION

As a concerned citizen cognizant of the inadequacy of the regulatory structure around advertising in South Africa, I would like to submit remarks and suggestions concerning five areas of the Sexual Offences Bill currently under deliberation. I believe that account should be taken of the following issues to assist in the interpretation of the future Sexual Offences Act and to prevent certain loopholes and contradictions that may result in practice given the current state of the document.

1. DEFINITIONS

1. The Bill does not define "pornography", which leaves room for misinterpretation of the law. Pornography contains various categories, such as soft or hard porn. For the purposes of the sections in the Act that refer to pornography, a distinction may or may not need to be made between pornography and more 'serious' film-making which may incorporate sex scenes that could be deemed pornographic in terms of their explicit nature.

2. The definition of "sexual violation" is overly broad in the sense that it does not qualify the prohibited acts as those conducted unlawfully. In other words, read as it stands in the version I have acquired, the definition of "sexual violation" in fact characterises much of the sexual activity that takes place legally between consenting adults in a legitimate relationship. It may be necessary to qualify the definition by stating that these constitute violations only where they are deemed unlawful by the Bill, or:

- Are carried out without consent of one or more participants;
- Are carried out with or in the presence of a child or person who is mentally disabled; or
- Are carried out for reward.

2. BESTIALITY (S 12)

Animals are sexually exploited in various ways not accounted for in S 12 of the Bill. Animals mouths and tongues can be used as sexual stimulation, and indeed there is a practice of

inserting an entire small animal, such as a mouse, into the rectum. The section on bestiality needs to be worded to ensure that these other forms of sexual abuse of animals are made offences.

3. EXPOSURE TO PORNOGRAPHY (S 17 A AND 24 A)

Commendably, the s17A of the Bill controls children's exposure to age-inappropriate sexual material and pornography. I infer that the intention of this section and also of S 24A is to protect children and the mentally disabled from every conceivable instance in which they could be harmfully exposed to pornography or age-inappropriate material. However, there is a gap relating to advertisements that contain pornography or harmful, disturbing or age-inappropriate material.

Harmful, Disturbing and Age-Inappropriate material in advertisements

The Bill contemplates material considered disturbing, harmful or age-inappropriate by the Films and Publications Act 1996. However, this Act covers only films, publications and games, and therefore does not provide for the classification of advertisements, nor for the possibility of age-inappropriate material in advertisements. Indeed, it seems that no legislation covers advertisements in this way; it appears that the DTI and the Portfolio Committee on Communication, as well as the self-regulating industry body the Advertising Standards Authority (ASA), provide the only regulation at present. The Advertising Standards Code does not provide for age-inappropriacy in advertising content.

Thus, advertising remains outside legislation as a loophole in the Films and Publications Act – resulting, for example, in the advertising of sexual services on billboards and in classified ads. This appears to be an oversight rather than a deliberate omission – internationally, countries such as Australia allow for the classification of advertisements, so there is certainly a precedent to apply the law equally to all media.

To address this gap, I propose that a clause be included in the future Sexual Offences Act specifically identifying as unlawful any form of advertisement containing harmful, disturbing or age-inappropriate content. Definitions of these types of content could be imported from the Films and Publications Act. A definition of various forms of advertising appears in the ASA Advertising Standards Code.

4. ADDITIONAL PROVISION ON UNINTENTIONAL SEXUAL GROOMING (S 17)

Recently there has been press concern about sex acts committed by children upon other children, with the explanation that they had witnessed sexual behaviour on television. It can also be noted that there are moves in the UK to classify 'lad mags' and confine them to top shelves after concerns arose that these magazines were encouraging premature sexual development among children.

Once again, the Films and Publications Act covers a variety of media through which children could be unintentionally groomed for or prematurely orientated toward sex by providing for classification. However, it does not cover advertising or internet sites. In many cases, these

purvey highly sexualized imagery which indirectly educates children into a precocious sexual awareness. In other cases, they suggest that certain unlawful sexual activities – such as paid sexual services – are in fact legitimate. A simple example would be the internet website www.sextrader.co.za, or advertisements for lap-dancing clubs, where arousal and/or masturbation is effected through indirect contact between the pelvis of the dancer and that of the client. The advertising of these services suggests not only legality but also a broad social consensus that children need not be shielded from exposure to such services.

Advertisements for sex telephone lines and SMS pornography appear in national news media and cannot hope to restrict children's access to cellphone pornography even if an age restriction is stated – many wealthy children have cellular phones paid for by their parents and will simply call the number despite the restriction – costs are not prohibitive at R7 to R15.

In other words, due to the unrestricted nature of the publications in which they appear, certain advertisements overreach to an inappropriately broad audience, effectively, though unintentionally, encouraging children to access inappropriate sexual content without sufficient controls in place to ensure that the material is barred from children.

As advertising cannot be classified and thus age-restricted in terms of the Films and Publications Act, it remains for the Sexual Offences Act to prohibit unintentional sexual grooming of the following nature:

- 1) The advertising of legal sexual services in unrestricted or public media where children may be voluntarily or involuntarily exposed to age-inappropriate material.
- 2) The use in advertising of imagery or wording that represents men, women or children as sexual commodities from whom sexual services or sexual favours can be purchased or acquired through some other form of exchange or reward.

This will prevent unintentional sexual grooming and the premature sexualisation of the child which would make him/her more vulnerable to sexual exploitation or illegal but consensual early sexual activity.

5. ADDITIONAL PROVISION ON ADVERTISING OF ILLEGAL SEXUAL SERVICES

Currently, sexual services are widely advertised and such advertising does not appear to be regulated or restricted. A provision should be made in the Sexual Offences Bill criminalising the advertising of all brothel keeping, prostitution and illegal sexual services both directly and indirectly. Currently, newspapers permitting the advertising of services from lap-dancing to 'intimate/sensual massage' to vaguely worded but explicitly illustrated advertisements for women offering "couples, doubles, hotels, overnight" or providing services of an unstated nature in "private chalets".

It is clear that many of these services are illegal despite the sometimes indirect wording, and as such news media that publish these advertisements are breaking the law. However, their crime is of an accomplice nature and in addition the law is not applied in practice. If the advertisements themselves are made an offence it will be easier to prosecute and this will have the effect of causing the news media to regulate this material more diligently.

I appreciate the opportunity to participate in the development of national legislation.

Yours sincerely

Tamlyn Monson