[CH] Hard Porn - the Federal Council Takes a Softer Line

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The Swiss Federal Council wants to put an end to the consumption of hard porn being exempt from criminal sanctions. Its bill, adopted on 10 May 2000, proposed the addition of a paragraph 3.a) to Article 197 of the Criminal Code. This makes not only anyone manufacturing or commercialising hard porn liable to prosecution - it also includes anyone in possession of such items, regardless of how they have been obtained (purchase, rental, loan, exchange or gift). So that the prosecuting authorities are not inundated, mere consumption will not warrant prosecution - the passive viewer of works of child pornography will not be prosecuted.

In the context of the Internet, possession will give rise to criminal proceedings if users download pornography onto their own data supports (eg hard disk or diskettes). On the other hand, where the search motor carries out an "intermediate save" of data with pornographic content in temporary files, the Federal Council does not consider that the existence of such temporary data constitutes possession.

Whereas the draft bill from the Department of Justice and Police was aimed at hard porn in general, the Government's bill is limited to child pornography and representations of sexual violence. According to the Federal Council, the latter do not include representations of acts of sado-masochism carried out by common consent where other offences are committed at the same time (eg physical injury). Nor does possession of representations of sexual acts involving animals fall within the scope of the new provision. The sexual maltreatment of animals nevertheless remains a punishable offence as it is now under Article 27 of the Animal Protection Act.

A further type of hard porn not covered by this reinforcement is pornography showing sexual acts involving human excreta.

And what of virtual representations? Contrary to the German and Austrian Criminal Codes, the Swiss Federal Council considers that these should be treated as representations of real scenes as it feels that, since it is not always possible to determine whether a scene is real or virtual, this would complicate the battle against child pornography. Moreover, certain virtual images - such as cartoon strips and animated films - were mainly directed at young people, and it would therefore be "inadvisable for them not to be subject to criminal law, in view of the

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need to protect young people".

The maximum penalty will be less than that imposed on persons involved in the manufacturing or commercialising of pornography - a maximum of one year's imprisonment (compared with three years) or a fine. Although not requested to do so by the Chambers, the Federal Council feels it is necessary to include Article 135 in the revision. Mere possession of cassettes stressing scenes of cruelty towards humans or animals will also be punishable in future. Here again, the Government's explanation is that, since the serious offences being committed are demand-driven, it is at the demand level that action needs to be taken.

Rapport explicatif et avant-projets concernant la modification du code pénal suisse et du code pénal militaire relativement aux infractions contre l'intégrité sexuelle (prescription des infractions contre l'intégrité sexuelle des enfants et interdiction de la possession de pornographie dure).

Report concering the modification of the Swiss Criminal Code and the Militar Criminal Code in relation to possesion of child pornography material.

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