

DIRTY LAWS: A CRITIQUE OF THE AUDIOVISUAL
MEDIA SERVICES REGULATIONS 2014
AND SECTION 63 OF THE CRIMINAL JUSTICE
AND IMMIGRATION ACT 2008

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ABSTRACT

The United Kingdom's recently enacted anti-pornography laws, the Audiovisual Media Services Regulations 2014 and section 63 of the Criminal Justice and Immigration Act 2008, are inconsistent with the European Convention on Human Rights, United Kingdom case law, and United Kingdom public policy. The Audiovisual Media Services Regulations 2014, which bans the sale of a wide array of domestically produced pornography, and the Criminal Justice and Immigration Act 2008, which criminalizes the possession of "extreme pornography," are among the most restrictive anti-pornography laws in the democratic world. These laws were passed in response to the rise of the Internet, which introduced material into the United Kingdom's pornography marketplace that defies traditional state regulation. The European Court of Human Rights case law suggests these anti-pornography laws are potentially inconsistent with the Convention's article 10 provisions for the protection of free expression and article 8 provisions for the protection of privacy. In addition, United Kingdom case law indicates that the government is interpreting and enforcing these anti-pornography laws in a manner that is overly broad. Insofar as these anti-pornography laws target marginalized communities, stifle business innovation, and burden freedom of expression, they are contrary to United Kingdom public policy. For these reasons, the Audiovisual Media Services Regulations 2014 and Criminal Justice and Immigration Act 2008 should be repealed.

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INTRODUCTION

Unlike its American cousin, which has steadily expanded protections for sexual freedom,¹ the United Kingdom has recently enacted two of the most

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¹ See *Lawrence v. Texas*, 539 U.S. 558 (2003); *United States v. Windsor*, 570 U.S. (2013).

restrictive anti-pornography laws in the democratic world.² Though the United States and the United Kingdom share a similar sexual culture, including entertainment like the film *Fifty Shades of Grey*, a sadomasochistic love story based on the enormously successful novel by British author E.L. James,³ only the United States has recognized a liberty right to engage in sexual relations and rejected morality as a legitimate state interest.⁴ From *Lawrence* to *Windsor*, the U.S. Supreme Court expanded protection for sexual expression and recognized the validity of alternative sexual orientations.⁵ During this period, the United States government has generally declined to bring obscenity prosecutions, allowing a new sexual culture to flourish alongside the rise of the Internet.⁶ By contrast, the United Kingdom does not have constitutional protections for sexual expression.⁷ Unencumbered by constitutional safeguards, the United Kingdom government has responded to the rise in Internet pornography by passing the Audiovisual Media Services Act 2014 and section 63 of the Criminal Justice and Immigration Act 2008, laws that dramatically restrict and criminalize pornography.⁸

From social networking to online banking, the Internet has brought untold innovation and opportunity to the United Kingdom. It has also brought a challenge to the United Kingdom's ability to regulate pornographic material.⁹ In the past, the government was able to maintain strict control over the availability of pornography, mandating that adult videos only be sold through licensed bookstores and enforcing restrictive content guidelines.¹⁰ The Internet, however, has introduced pornographic material that exists beyond the current regulatory framework.¹¹ While the government has the authority to regulate the sale of physical items in physical stores, the government, for the most part, lacks the authority to remove content from the Internet or prohibit the sale of digital content.¹² In response to

² See Julian Petley, *The Regulation of Pornography on Video-On-Demand in the United Kingdom*, 3 PORN STUD. 260 (2014); see also William T. Goldberg, *Two Nations, One Web: Comparative Legal Approaches to Pornographic Obscenity by the United States and the United Kingdom*, 90 B.U. L. REV. 2121, 2135 (2010).

³ Ben Child, *50 Shades of Grey Hits \$500 Million at Global Box Office*, GUARDIAN (Mar. 6, 2015), <https://www.theguardian.com/film/2015/mar/06/fifty-shades-of-grey-hits-500-million-at-the-global-box-office>.

⁴ See Kristin Fasullo, Note, *Beyond Lawrence v. Texas: Crafting a Fundamental Right to Sexual Privacy*, 77 FORDHAM L. REV. 2997, 3024 (2009).

⁵ *Id.*; *Windsor*, 133 S. Ct. 2675.

⁶ Goldberg, *supra* note 2, at 2131.

⁷ Stephen Gardbaum, *The Myth and the Reality of American Constitutional Exceptionalism*, 107 MICH. L. REV. 391, 393 n.6 (2009).

⁸ Criminal Justice and Immigration Act 2008, c. 4, § 63 (UK); The Audiovisual Media Services Regulations 2014, S.I. 2014/2916 (UK).

⁹ See Petley, *supra* note 2.

¹⁰ *Id.* at 277.

¹¹ *Id.*

¹² Myles Jackman, *The UK's Sexist New Pornography Restrictions Aren't Just an Act of State Censorship, but Could be the First Step Toward Something Even Worse*, INDEPENDENT (Dec. 4, 2014), <http://www.independent.co.uk/voices/comment/the-uks-sexist-new-pornography-restrictions-arent-just-an-act-of-state-censorship-but-could-be-the-first-step-towards-something-even-worse-9903830.html>.

this loss of control over the pornography marketplace, the United Kingdom passed two of the most restrictive anti-pornography statutes in the democratic world: section 63 of the Criminal Justice and Immigration Act 2008 (“CJIA 2008”)¹³ and the Audio Visual Media Services Regulations 2014 (“AVMS 2014”).¹⁴ CJIA 2008 criminalizes the possession of what it deems an “extreme pornographic image”¹⁵ and AVMS 2014 bans the domestic production of an even wider array of pornography, providing that the pornography is distributed through a television-like medium.¹⁶ The manner in which the laws are written and enforced has the effect of banning and stigmatizing the depiction of sexual practices outside the scope of traditional, phallogocentric, heterosexual pornography. As a result, these laws disproportionately impact marginalized communities, such as the lesbian, gay, bisexual and transgender (“LGBT”) community, the bondage, discipline, sadism and masochism (“BDSM”) community, and other communities engaged in non-heteronormative sexualities.

Though admittedly designed to be far-reaching, AVMS 2014 and CJIA 2008 are being interpreted and enforced in a manner that exceeds statutory authority. In addition, these statutes are inconsistent with the European Convention on Human Rights, United Kingdom common law, and United Kingdom policy. For these reasons, these statutes should be repealed.

In Part I.A, this article will discuss the history of pornography regulation in the United Kingdom, from the early common law to the dawn of the Internet era. In Part I.B and Part I.C, this article will outline the process by which CJIA 2008 and AVMS 2014 were adopted, along with their framework and function. In so doing, this article will necessarily address the impact of the Internet on the pornography marketplace, consumption habits, and the political environment of the United Kingdom. In Part I.D, this article will argue that the reasons advanced for the passage of CJIA 2008 and AVMS 2014 rest on flawed and problematic sociological research and public policy.

In Part II, this article will examine the impact of CJIA 2008 and AVMS 2014 on the United Kingdom society and argue that the effects of these laws are adverse to the United Kingdom public policy because they engender subjugation of marginalized communities, economic distress, and greater censorship.

In Part III, this article will argue that CJIA 2008 and AVMS 2014 are being applied and enforced in a manner that exceeds statutory authority. Specifically, this article will argue that CJIA 2008 and AVMS 2014 are being applied to types of pornography they were not originally meant to regulate. Further, this article will argue that AVMS 2014 is being applied to mediums that are not “TV-like” and, therefore, outside the scope of the legislation. This article will also highlight the

¹³ Criminal Justice and Immigration Act 2008, c. 4, § 63 (UK).

¹⁴ The Audiovisual Media Services Regulations 2014, S.I. 2014/2916 (UK).

¹⁵ Criminal Justice and Immigration Act 2008, c. 4, § 63 (UK).

¹⁶ The Audiovisual Media Services Regulations 2014, S.I. 2014/2916 (UK).

fact that AVMS 2014 censors significantly more material than the European Union's Audiovisual Media Services Directive envisioned for its member states.

In Part IV, this article will argue that the article 10 protection for free expression and the article 8 protection for privacy rights in the European Convention on Human Rights ("ECHR") may, if applied in a non-discriminatory fashion in which erotic expression and sexual privacy are recognized as legitimate values, render parts of CJIA 2008 and AVMS 2014 inconsistent with the ECHR.

I. OBSCENITY LAW IN THE UNITED KINGDOM

This section will begin by examining the history of censorship in the United Kingdom, from the Obscene Publications Act 1857, which established obscenity as a crime, to the Video Recording Act 1984, which empowered the United Kingdom government to regulate the content of commercially available video cassettes. The article will then consider the Criminal Justice and Immigration Act 2008, which criminalizes the possession of "extreme pornography" and the Audiovisual Media Services Regulations 2014, which ban the domestic production and sale of a wide array of pornographic content.

A. *The History of the Regulation of Pornography*

The earliest instance of the regulation of pornography in the United Kingdom was the prosecution of Edmund Curl for the publication of an erotic novel, entitled *Venus in the Cloister, or The Nun in her Smock*.¹⁷ Though obscenity did not yet exist as a common law offense, the court established a basis for future obscenity jurisprudence, holding that Edmund Curl, by virtue of publishing his erotic novel, had introduced into society an item that tended to "weaken the bonds of civil society, virtue, and morality."¹⁸ This offense was deemed a misdemeanor.¹⁹

Obscenity remained a common law offense until 1857, when the Obscene Publications Act 1857 ("OPA 1857") was passed and obscenity was prohibited by statute.²⁰ OPA 1857, however, did not define obscenity, leaving courts to apply the law and craft a definition. Judicial application of OPA 1857 introduced the Hicklin Test, which asked whether the allegedly obscene materials would have the tendency to deprave and corrupt "those whose minds are open to such immoral influences."²¹ OPA 1857 was not updated until the Obscene Publications Act 1959 ("OPA 1959") was passed, which included protections for literature and works of artistic merit.²² OPA 1959 also stipulated that a determination of obscenity must take into account whether the allegedly obscene material can be accessed by the

¹⁷ GEOFFREY ROBERTSON, *OBSCENITY* 23 (1979).

¹⁸ *Id.* (quoting *R. v. Curl*, 2 Stra. 788 (1727)).

¹⁹ *Id.*

²⁰ Goldberg, *supra* note 2, at 2135.

²¹ *Queen v. Hicklin* [1868] QB 360 at 371 (Eng.).

²² Obscene Publications Act 1959, 7 & 8 Eliz. 2 c. 66 (UK).

party susceptible to the material's influence and whether the material will have a tendency to deprave or corrupt that party.²³ For this reason, the Crown Prosecution Service declined to prosecute newsagents who sold soft-core pornographic magazines, providing those magazines were positioned on the top shelf, away from the reach of children.²⁴

In response to the rise of the commercial availability of videos on Video Home System ("VHS") in the 1980's, the government passed the Video Recording Act 1984 ("VRA 1984"), which established that all videos must be classified according to the type of content they contain before they can be sold.²⁵ VRA 1984, in turn, empowered the British Board of Film Classification ("BBFC") with the authority to classify all commercial video recordings.²⁶ Videos that the BBFC classifies as R18 can be sold only in licensed sex shops, which no one under eighteen years of age may enter.²⁷ R18 content, which cannot be sold by mail order or in any store that is not a licensed sex shop, refers to content that is sexually explicit but not legally obscene.²⁸ As OPA 1959 is vague and case law is varied, the Crown Prosecution Service provides guidelines for content that it considers obscene and, thus, outside the scope of R18 classification.²⁹ According to the Crown Prosecution Service, this obscene content includes content that contains realistic portrayals of rape, sadomasochistic material that goes beyond trifling and transient infliction of injury, bondage, fisting, and urination or excretion upon another body, among other acts.³⁰

Until the rise of the Internet, R18 material sold in licensed sex stores was the most explicit and thematically controversial legally available pornography in the United Kingdom. However, the Internet allowed citizens of the United Kingdom to download pornographic content, produced domestically and abroad, that was stronger than R18.³¹ While a legal framework to regulate the sale of magazines and Digital Video Discs ("DVD") existed, the government lacked a framework to regulate the sale of digital content online. Further, as many pornographic websites were based abroad, the content producers were not vulnerable to the United Kingdom's obscenity law. Consequently, the government of the United Kingdom was not able to regulate comprehensively the pornography produced and distributed on the Internet. As online pornography quickly replaced magazines and DVDs, the government experienced a sharp decline in its ability to control what

²³ *Id.* § 1.

²⁴ Petley, *supra* note 2, at 270.

²⁵ Video Recordings Act 1984, c. 39 (UK).

²⁶ *Id.*

²⁷ Petley, *supra* note 2, at 270.

²⁸ Dylan Matthews, *Why the UK is Banning Porn Studios from Depicting a Bunch of Sex Acts*, VOX (Dec. 4, 2014, 12:40 PM), <http://www.vox.com/2014/12/4/7332765/uk-porn>.

²⁹ *Id.*

³⁰ *Id.*

³¹ Jerry Barnett, *It's About Censorship, Not Sexism*, SEX & CENSORSHIP (Dec. 4, 2014), <http://sexandcensorship.org/2014/12/censorship-not-sexism/>.

type of pornographic content its citizens could access.³²

*B. The Criminal Justice and Immigration Act 2008
and the Criminalization of the Possession of “Extreme Pornography”*

Section 63 of the Criminal Justice and Immigration Act 2008 was passed as a means to address the rise of online pornography and the government’s subsequent loss of control over the commercial availability of previously prohibited forms of pornography.³³ Although this law was passed in 2008, lawmakers began crafting its contours in 2003, in the wake of the murder of Jane Longhurst by Graham Coutts and the sensational trial that followed.³⁴ Even though Coutts claimed that he had accidentally strangled Longhurst during consensual sex, the jury determined that Coutts had intentionally strangled and killed Longhurst.³⁵ When it was disclosed during trial that Coutts had viewed pornography that featured strangulation and sadomasochism, the United Kingdom authorities pressed for international cooperation in removing sadomasochistic pornography from the Internet.³⁶ In particular, the United Kingdom asked the United States to shut down the United States-based websites featuring sadomasochistic pornography that Coutts had been viewing.³⁷ Citing constitutional protections, the United States declined to interfere with the websites.³⁸

Unable to galvanize an international movement to ban specific types of pornography from the Internet, the United Kingdom drafted section 63 of the CJIA 2008. Section 63 criminalizes the possession of what it deems to be an “extreme pornographic image.”³⁹ In order for an item to be considered an extreme pornographic image, it must be both “pornographic” and an “extreme image.”⁴⁰ Under this Act, material is pornographic if it is “of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.”⁴¹ This act defines “extreme image” as material that is “grossly offensive, disgusting or otherwise of an obscene character.”⁴² In addition to this broad definition, the Act specifies four categories of images that are considered extreme. These categories include images that capture:

- (a) an act which threatens a person’s life,

³² *Id.*

³³ Goldberg, *supra* note 2, at 2139.

³⁴ *Id.* at 2138.

³⁵ *R v. Graham Coutts* [2006] UKHL 39 (Eng.).

³⁶ Goldberg, *supra* note 2, at 2138.

³⁷ *Id.* at 2139.

³⁸ *Id.*

³⁹ Criminal Justice and Immigration Act 2008, c. 4, § 63 (UK).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

- (b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals,
- (c) an act which involves sexual interference with a human corpse, or
- (d) a person performing an act of intercourse or oral sex with an animal (whether dead or alive).⁴³

Under CJIA 2008, a person who possesses an extreme pornographic image is guilty of a crime, with penalties including up to three years of imprisonment.⁴⁴ In this sense, CJIA 2008 stands apart from OPA 1959 and traditional obscenity statutes in that it not only holds publishers liable, but also anyone who purchases or otherwise takes possession of the prohibited material.⁴⁵ As a result, CJIA 2008 treats “extreme pornography,” which includes a vast array of pornography that is legal in the United States and many other countries, as a material similar to child pornography, which is almost universally considered criminal to possess.

Since the passage of CJIA 2008, there have been at least 5,500 prosecutions for the possession of extreme pornography.⁴⁶ The rationale for these prosecutions is clear: the government, unable to remove certain types of pornography from the Internet, seeks to force its citizens to close their eyes.

C. The Audiovisual Media Services Regulations 2014 and the Imposition of the R18 Standard on Internet-Based Video-On-Demand Content

The AVMS 2014 prohibits the United Kingdom-based producers from selling pornography stronger than R18 through online Video-on-Demand (“VOD”) services.⁴⁷ Content that is banned includes depicting of spanking, caning, fisting, female ejaculation if the ejaculate touches another person or is consumed, urination if the urine touches another person or is consumed, age play (in which adults suggest or pretend they are under the age of eighteen), bondage, and face-sitting, among many other acts.⁴⁸ Content that realistically depicts rape and sadomasochistic material that goes beyond trifling infliction of injury is also banned.⁴⁹

Though passed in 2014, AVMS 2014 finds its genesis in the Audiovisual Media Services Directive (“AVMS Directive”) passed by the European Parliament in 2007.⁵⁰ The AVMS Directive was issued, in part, to update the Television

⁴³ *Id.*

⁴⁴ *Id.* § 67.

⁴⁵ *Id.* §§ 63, 67.

⁴⁶ Hazel Eracleous, *Letter to Prime Minister, S63(7) of the Criminal Justice and Immigration Act 2008 Prospective Judicial Review in the Administrative Court of the High Court: Pre Action Protocol Letter*, BACKLASH (Oct. 24, 2014), <http://www.backlash-uk.org.uk/pm141024/>.

⁴⁷ The Audiovisual Media Services 2014, S.I. 2014/2916 (UK).

⁴⁸ Myles Jackman, *The Following Content Is Not Acceptable*, MYLESJACKMAN.COM (Nov. 30, 2014), <http://mylesjackman.com/index.php/my-blog/106-the-following-content-is-not-acceptable>.

⁴⁹ Matthews, *supra* note 28.

⁵⁰ Petley, *supra* note 2, at 261.

Without Frontiers Directive (“TVWF”) for the Internet era.⁵¹ While the TVWF required member states to take measures to prevent television broadcasters from airing programs that “might seriously impair the physical, moral, or mental development of minors,”⁵² the AVMS Directive extended regulation to non-linear services, which are defined as “services provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request.”⁵³ The AVMS Directive, however, does not consider all nonlinear audiovisual content subject to regulation.⁵⁴ Under Recital 13a, the AVMS Directive regulates only nonlinear content that is “television-like” and “compete(s) for the same audience as television broadcasts, and the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive.”⁵⁵

The “television-like” nonlinear services that the AVMS Directive does seek to regulate, however, are not subject to the same standard of regulation as linear television services.⁵⁶ While content that may seriously impair the moral development of a minor is entirely banned from television, the AVMS Directive, under article 3g, requires only that member states ensure that nonlinear services featuring such content be made available in a way that “minors will not normally see or hear.”⁵⁷

Though the United Kingdom initially lobbied against the European Union’s AVMS Directive, arguing that it was overbroad and hostile to new media industries, the United Kingdom government nevertheless moved to comply with the AVMS Directive’s framework.⁵⁸ The Audiovisual Media Services Regulations 2009 (“AVMS 2009”) were passed, which amended the Communications Act 2003 to install the Office of Communications (“Ofcom”) and the Authority for Television On Demand (“ATVOD”) as the regulatory bodies charged with implementing AVMS 2009.⁵⁹ In particular, ATVOD was charged with regulating Video-On-Demand and other on-demand services, with on-demand services defined as “programmes the form and content of which are comparable to the form and content of programmes normally included in television programme services.”⁶⁰

AVMS 2009 also adopted the AVMS Directive’s provisions concerning the protection of children from harmful VOD content.⁶¹ For this reason, the

⁵¹ *Id.*

⁵² Council Directive 89/552, Television Without Frontiers Directive, 1989 O.J. (L298) 23 (EC).

⁵³ Council Directive 2007/65, Audiovisual Media Services Directive, art. 1, 2007 O.J. (L332) 27, 36 (EC) [hereinafter AVMS Directive].

⁵⁴ Petley, *supra* note 2, at 262.

⁵⁵ AVMS Directive, *supra* note 53, at 29.

⁵⁶ Petley, *supra* note 2, at 262.

⁵⁷ AVMS Directive, *supra* note 53, art. 3g.

⁵⁸ Petley, *supra* note 2, at 262-64.

⁵⁹ *Id.* at 265.

⁶⁰ The Audiovisual Media Services Regulations 2009, S.I. 2009/2979 (UK).

⁶¹ *Id.*

Communications Act 2003 was amended to introduce section 368(E), which mirrors the language of the AVMS Directive, stipulating that VOD services that may seriously impair the moral development of minors must be “made available in a manner which secures that such persons will not normally see or hear it.”⁶²

In contrast to the United Kingdom government’s initial reluctance to embrace the restrictions of the AVMS Directive, the United Kingdom’s Department for Culture, Media & Sport wrote a letter to Ofcom in 2010, suggesting that AVMS 2009 did not go far enough in restricting the access of minors to potentially harmful VOD content.⁶³ In response, Ofcom released a 2011 report entitled *Sexually Explicit Material and Video On Demand Services*, in which it proposed legislation that would prohibit the United Kingdom-based producers from selling VOD content stronger than R18.⁶⁴ In keeping with this move to impose tighter restrictions on the distribution and sale of sexually explicit content, ATVOD, in 2012, announced Rule 11, which mandated that producers of VOD material that is R18 or R18 equivalent must install age verification technology in order to ensure that no one under the age of eighteen can access the material.⁶⁵ After Rule 11 was announced, ATVOD vigorously prosecuted producers who violated this rule. Consequently, several producers, including Playboy TV, moved their headquarters outside of the United Kingdom, thereby escaping the control of ATVOD and the United Kingdom regulatory scheme.⁶⁶

When AVMS 2014 was enacted, its measures closely paralleled those proposed by Ofcom in 2011; in essence, AVMS 2014 banned content stronger than R18 from VOD.⁶⁷ Though it may not appear that online pornographic content is “television-like,” it is clear that ATVOD and the United Kingdom government believe AVMS 2014 extends to a wide array of Internet-based pornographic content.⁶⁸ In this sense, AVMS 2014 can be viewed in a light similar to CJIA 2008—it is the government’s attempt to reinstitute the level of control it had over the availability of pornography during the pre-Internet era.

*D. Examination of the Research Motivating and Justifying
AVMS 2014 and CJIA 2008*

The rationales the United Kingdom government cited in justifying the restrictions imposed by CJIA 2008 and AVMS 2014 were the protection of children from the harmful influence of certain types of pornography and the concern that specific acts depicted in pornography may be unsafe.⁶⁹ In both cases,

⁶² *Id.*

⁶³ Petley, *supra* note 2, at 265.

⁶⁴ OFCOM, SEXUALLY EXPLICIT MATERIAL AND VIDEO ON DEMAND SERVICES 53 (2011) (UK).

⁶⁵ Petley, *supra* note 2, at 271.

⁶⁶ *Id.* at 276.

⁶⁷ Jackman, *supra* note 48.

⁶⁸ Petley, *supra* note 2, at 278.

⁶⁹ Matthews, *supra* note 28.

the research upon which the government relied provides only tepid support for these laws. Tepid support, however, is insufficient to justify laws that infringe upon civil liberties such as free expression and the right to privacy.

As previously noted, Ofcom, at the request of the United Kingdom's Department for Culture, Media & Sport, issued a report in 2011 entitled *Sexually Explicit Material and Video On Demand Services*. In this report, Ofcom attempted to determine whether exposure to certain types of sexually explicit content could potentially harm the development of minors.⁷⁰ Ofcom concluded that the research reviewed "does not provide conclusive evidence that sexually explicit material 'might seriously impair' the development of minors."⁷¹ In an earlier report, entitled *R18 Material: Its Potential Impact on People Under 18: an Overview of the Available Literature*, Ofcom reached a nearly identical conclusion, stating that "there is no empirical research that proves beyond doubt that exposure to R18 material seriously impairs the mental or physical development of minors."⁷²

Despite the lack of conclusive evidence, Ofcom suggested the precautionary principle, a rule upon which the European Commission relies when drafting laws such as the AVMS Directive, would support the banning of VOD content stronger than R18, due to the possibility that some of this content may prove harmful to children.⁷³ However, the mere possibility of harm is insufficient to justify laws that restrict civil liberties and undermine the viability of certain industries, in particular the pornography marketplace.

In an opinion article discussing AVMS 2014, Murray Perkins, an official at the BBFC, suggested that public safety is one of the motivations justifying the restrictions.⁷⁴ He explained that "the BBFC may cut certain acts in pornographic works where imitation or the influencing of attitudes is a particular concern."⁷⁵ More specifically, he argued that acts depicting breath restriction, such as facesitting, are unsafe and should be banned from pornography.⁷⁶ Many of the acts banned by AVMS 2014, however, are safe if practiced responsibly.⁷⁷ Fisting, for instance, is practiced widely and there is significant literature on how to perform this act without injury.⁷⁸ Facesitting, on the other hand, is rarely depicted or practiced in such a way as to cause actual breath restriction.⁷⁹ Furthermore, television and media depict many acts that viewers may attempt to emulate that are

⁷⁰ OFCOM, *supra* note 64.

⁷¹ *Id.* at 18.

⁷² ELLEN HELSPER, OFCOM, R18 MATERIAL: ITS POTENTIAL IMPACT ON PEOPLE UNDER 18: AN OVERVIEW OF THE AVAILABLE LITERATURE 4 (2005) (UK).

⁷³ Petley, *supra* note 2, at 269.

⁷⁴ Murray Perkins, *The Truth About the Porn Law Changes*, GUARDIAN (Dec. 3, 2014), <http://www.theguardian.com/commentisfree/2014/dec/03/porn-law-amendments-film-board>.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Matthews, *supra* note 28.

⁷⁸ *Id.*

⁷⁹ *Id.*

not entirely safe, such as skiing, smoking, drug use, and many others.⁸⁰ These acts, however, are not banned.

II. THE IMPACT OF AVMS 2014 AND CJIA 2008 ON SOCIETY AND THE EXTENT TO WHICH THESE LAWS ARE ADVERSE TO THE UNITED KINGDOM POLICY GOALS

A. Discriminatory Impact on Marginalized Communities

In addition to promoting censorship, the restrictions imposed by AVMS 2014 unfairly target acts that depict female pleasure and female empowerment, as well as acts common in the LGBT community and the BDSM community.⁸¹ For instance, facesitting and female ejaculation are banned, while male ejaculation and fellatio that restricts normal breathing are acceptable.⁸² Further, the act of fisting, which is banned, has been suggested to be an important part of LGBT sexuality.⁸³ In addition, spanking and caning, which have been banned, have been suggested to be important acts for many people who practice BDSM. Some adult performers have suggested that AVMS 2014 has, in fact, failed to target pornography that normalizes problematic behaviors and, instead, banned pornography that was providing a social good by recognizing and affirming alternative sexualities.⁸⁴ Under this line of reasoning, pornography producers who cater to marginalized communities and attempt to subvert the heteronormative paradigms of mainstream pornography will be the ones most affected by AVMS 2014.

B. Economic Effects

While AVMS 2014 and CJIA 2008 disproportionately affect smaller producers that cater to marginalized communities, the economic effect of the shuttering of all of these small production companies may be substantial.⁸⁵ Jerry Barnett, for example, the founder of the website *sexandcensorship.com* and the former owner of a streaming video retail website, was forced to close his business after Rule 11 was passed.⁸⁶ Mr. Barnett reports that his business was paying £200,000 in salaries and £50,000 in taxes before it closed.⁸⁷ Despite the fact that many mainstream sexual acts are still acceptable under AVMS 2014, several of the larger pornography producers have moved their operations out of the United Kingdom, to avoid Rule 11 and legal uncertainty.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Petley, *supra* note 2, at 277.

⁸⁶ *Id.*

⁸⁷ *Id.*

C. Greater Censorship

It has been suggested that CJIA 2008 and AVMS 2014 represent the beginning of what will be a wider campaign for censorship on the part of the United Kingdom government.⁸⁸ There is credence to this theory. In 2013, the government persuaded several Internet Service Providers to begin providing a “filtering” option that will allow the United Kingdom-based users to surf the Internet with a large majority of pornographic and violent content automatically blocked.⁸⁹ Critically, the government pressured the service providers to make the filter a default setting for users, forcing the users to request the filter to be removed.⁹⁰ In addition to this filtering scheme, the government has attempted to broker an agreement with banks and payment processors, in which these institutions would agree to refuse to transfer payment for pornography that is stronger than R18.⁹¹ This agreement was aimed at foreign pornographic content providers, to force them to stop providing content stronger than R18 to the United Kingdom residents.⁹² As the situation stands today, this agreement has not materialized and the United Kingdom residents are able to purchase content stronger than R18 from foreign content providers.⁹³ Domestic content providers are, of course, largely barred from producing this content by AVMS 2014.

Taken together, the filtering scheme, the attempt at an agreement to regulate transnational media flows, and the passage of CJIA 2008 and AVMS 2014 indicate a growing drive toward censorship in the United Kingdom. Though CJIA 2008 and AVMS 2014 have, perhaps, advanced the goal of morality and public safety in the eyes of some, these laws have also resulted in increased censorship, gender-based and sexual orientation-based discrimination, and economic damage to a sector of the economy. These results are counter to many of the policy goals of the United Kingdom, such as freedom of expression, open markets, and equality.

III. AVMS 2014 AND CJIA 2008 ARE BEING APPLIED AND ENFORCED IN A MANNER THAT EXCEEDS STATUTORY AUTHORITY

A. The Definition of “Extreme”

Extreme pornography prosecutions are frequently brought for the possession of pornography that does not fit the statutory definition of extreme.⁹⁴ In *R. v. Walsh*, decided in 2012, Simon Walsh, a barrister and former aide to London

⁸⁸ Barnett, *supra* note 31.

⁸⁹ *BT Default ‘Pornfilter’ Switched On*, BBC (Dec. 16, 2013), <http://www.bbc.com/news/technology-25400009>.

⁹⁰ *Id.*

⁹¹ Petley, *supra* note 2, at 273-74.

⁹² *Id.* at 274.

⁹³ *Id.*

⁹⁴ Erika Rackley & Clare McGlynn, *Prosecuting the Possession of Extreme Pornography: A Misunderstood and Mis-Used Law*, 5 CRIM. L. REV. 400, 400-05 (2013).

mayor Boris Johnson, was charged by the Crown Prosecution Service with the possession of extreme pornography in relation to images that were captured during a private sex party.⁹⁵ The images depicted consensual acts of fisting and urethral sounding, a practice in which a probe is inserted into the urethra of the penis.⁹⁶ In this case, the defense argued that these acts are not encompassed within any of the four categories of extreme pornography previously discussed.⁹⁷ Specifically, the defense noted that fisting and urethral sounding, if performed safely, neither endanger a person's life nor are likely to cause serious injury to the breasts, anus, or genitals.⁹⁸ The jury agreed with the defense, acquitting Simon Walsh.⁹⁹

R. v. Webster is another case in which the Crown Prosecution Service charged an individual with possession of extreme pornography when the images in question did not meet the statutory definition of extreme.¹⁰⁰ In this case, which was decided in 2011, the prosecution argued that scenes of mock erotic murder fell within the statute's definition of extreme.¹⁰¹ The jury, however, acquitted the defendant, finding that the obviously faked death images were not realistic depictions of sexual violence.¹⁰² Similarly, in *R. v. Holland*, which was decided in 2010, the Crown Prosecution Service attempted to bring extreme pornography possession charges when the images in question did not meet the statutory definition of extreme.¹⁰³ In this case, the prosecution argued that a video depicting a woman having sex with a tiger was an item of extreme pornography.¹⁰⁴ It emerged, however, that the tiger was not real, a fact that was determined by the court when it observed the tiger turn to the camera and begin talking at one point during the video.¹⁰⁵ As CJIA 2008 only bans images that show intercourse with real animals, charges were subsequently dropped.¹⁰⁶

Walsh, *Webster*, and *Holland*, taken together, illustrate the extent to which the Crown Prosecution Service attempts to enforce CJIA 2008 in a manner that is overbroad, charging individuals with possession of extreme pornography when the pornography they possess does not, according to the court, meet the statutory definition of "extreme."

⁹⁵ *R. v. Walsh*, BACKLASH, <http://www.backlash-uk.org.uk/the-law/monitoring-prosecutions/r-v-walsh/> (last visited Jan. 31, 2016).

⁹⁶ *Id.*

⁹⁷ Criminal Justice and Immigration Act 2008, c. 4 § 63 (UK).

⁹⁸ *R. v. Walsh*, *supra* note 95.

⁹⁹ *Id.*

¹⁰⁰ *Schlock Horror! Jury Acquits Fantasy Porn Defendant*, BACKLASH (Jan. 7, 2011), <http://www.backlash-uk.org.uk/press/appearances-and-statements/stafford-acquittal/>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Tigerporn Defendant Miscarriage of Justice Averted*, BACKLASH (May 28, 2010), <http://www.backlash-uk.org.uk/press/appearances-and-statements/tiger-porn/>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

B. The Definition of "Television-Like"

Like CJIA 2008, AVMS 2014 will most likely be applied in a manner that exceeds statutory authority. Although little case law exists, as AVMS 2014 was passed on December 1, 2014, ATVOD has applied AVMS 2009 in a manner that exceeds statutory authority and there is no reason to believe AVMS 2014 will be enforced differently. In applying AVMS 2009, ATVOD interpreted the definition of what forms of content it may regulate broadly.¹⁰⁷ While the statute provides that ATVOD may regulate "programmes the form and content of which are comparable to the form and content of programmes normally included in television programme services," ATVOD initiated Rule 11 actions against online content producers who produced graphic pornography of irregular and varying running-length.¹⁰⁸ As graphic pornography with irregular running-length is neither comparable in form nor content to the material that is featured on television, it should not be within ATVOD's regulatory ambit, as per AVMS 2014.¹⁰⁹

Playboy TV raised this very argument in its defense during the appeal of a Rule 11 action against its online division.¹¹⁰ Ofcom, responding to the appeal, affirmed the Rule 11 action, holding that AVMS 2014 only "requires the form and content of relevant on-demand programmes to be comparable with but not identical to those on linear services."¹¹¹ Further, Ofcom held that the material offered by Playboy TV's website was comparable to that of material offered on television, in that the material is self-contained, of sustained duration, offered under individual titles, has end-credit sequences, and follows specific running orders.¹¹² As for the explicit nature of the content, Ofcom held that even though the content featured on Playboy TV's website is more explicit than the material allowed on linear television, the difference is one of degree rather than one of kind.¹¹³ In holding that explicit pornographic content of irregular running-time is comparable to content featured on linear television, Ofcom interprets AVMS 2009 in a manner that is overbroad and applies AVMS 2009 in a manner that exceeds statutory authorization.

In evaluating the manner in which AVMS 2014 should be interpreted, it is relevant to note that AVMS 2014 greatly exceeds the European Union's AVMS Directive in terms of restrictiveness.¹¹⁴ While the AVMS Directive only required that potentially harmful VOD content must be made available in a manner not

¹⁰⁷ Petley, *supra* note 2, at 260.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Ofcom, Appeal by Playboy TV Against a Notice of Determination by ATVOD that the Service "Climax 3 Uncut" Has Contravened Section 368BA of the Communications Act 2003, Dec. 21, 2010 (UK), <http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/Climax3Uncut.pdf>.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Petley, *supra* note 2, at 262.

accessible to minors, AVMS 2014 bans all content stronger than R18 from VOD.¹¹⁵ When combined with Ofcom's interpretation of VOD as any online content that features a title and end credits, AVMS 2014 effectively bans the United Kingdom-based producers from selling content stronger than R18 online.¹¹⁶ Though the European Court of Human Rights traditionally grants a wide margin of discretion to member states with regard to laws regulating morality, the extent to which Ofcom's interpretation of AVMS 2014 departs from the European Union's AVMS Directive should be noted when considering questions of statutory interpretation and legislative intent.¹¹⁷

IV. AVMS 2014 AND CJIA 2008 AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

A. AVMS 2014 and CJIA 2008 Are Inconsistent with Article 10 Free Speech Protections of the European Convention on Human Rights

Even though the European Court of Human Rights ("ECtHR") has not recognized pornography as protected expression under article 10 of the ECHR, the ECtHR's case law suggests that pornography, in limited circumstances, may be entitled to protection.¹¹⁸ For this reason, it is unclear whether CJIA 2008 and AVMS 2014 are fully consistent with article 10 of the ECHR.

The ECHR, a treaty to which the United Kingdom is a signatory, guarantees basic constitutional rights to individuals within member states.¹¹⁹ Article 10 of the ECHR guarantees freedom of expression.¹²⁰ Article 10, however, qualifies this grant of freedom of expression, noting that it is a right subject to restriction by laws which are

necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.¹²¹

In order to determine whether a law restricting freedom of expression is, in fact, "necessary in a democratic society," the ECtHR considers whether the law is addressing a pressing social need and whether it is addressing that need in a

¹¹⁵ Jackman, *supra* note 48.

¹¹⁶ Petley, *supra* note 2, at 279.

¹¹⁷ Paul Johnson, *Pornography and the European Convention on Human Rights*, 3 PORN STUD. 299, 304 (2014).

¹¹⁸ *Id.*

¹¹⁹ European Convention on Human Rights and Fundamental Freedoms, Sept. 3, 1953, 213 U.N.T.S. 22.

¹²⁰ *Id.* art. 10.

¹²¹ *Id.*

proportionate manner.¹²²

Traditionally, the ECtHR has upheld laws restricting pornography against article 10 challenges on the grounds that these laws are necessary to protect the morals of the society that enacted them.¹²³ In *Handyside v. United Kingdom*, decided in 1976 and one of the foundational cases on article 10 and pornography, the ECtHR considered whether a United Kingdom publisher's obscenity conviction violated article 10.¹²⁴ The material in question was an instructional book aimed at young people, entitled *The Little Red Schoolbook*, in which the author suggests that pornography can be a worthwhile tool for people to understand their sexuality.¹²⁵ On the basis of the possibility this book would persuade young people to view pornography, the publisher was convicted of obscenity charges.¹²⁶

In response to the publisher's article 10 appeal, the ECtHR affirmed the obscenity conviction, holding that the United Kingdom's action against the publisher was "necessary for the protection of morals of young persons in a democratic society."¹²⁷ The court further held that the "English courts acted reasonably, in good faith and within the limits of the margin of appreciation left to the Contracting States by Article 10 para. 2 (art. 10-2)."¹²⁸ This holding established a precedent by which the ECtHR would accord member states a wide margin of appreciation concerning laws that restrict pornography, finding that laws that restrict pornography often fall within the category of laws that are "necessary in a democratic society" for the "protection of morals" and, thus, outside the umbrella of article 10 protection.¹²⁹

Handyside, however, is decades old and there is a line of cases that suggest the ECtHR may be amenable to extending some form of constitutional protection to pornography. In *Scherer v. Switzerland*, decided in 1993, the court departed from its longstanding precedent of denying article 10 protection to pornography, finding that the screening of pornographic films within a sex shop constituted protected expression under article 10.¹³⁰ In its holding, the court stressed the private nature of the expression, noting that the purpose of the establishment was not visible from the street, and that the screening room was only visited by "individuals who were aware of what awaited them and intended to see a film of this kind."¹³¹

The court's holding in *Scherer* does not have precedential effect on the

¹²² Johnson, *supra* note 117, at 301.

¹²³ *Id.* at 303.

¹²⁴ *Handyside v. United Kingdom*, 24 Eur. Ct. H.R. (ser. A) at 23 (1976).

¹²⁵ *Id.* ¶ 32.

¹²⁶ *Id.* ¶ 17.

¹²⁷ *Id.* ¶ 49.

¹²⁸ *Id.* ¶ 47.

¹²⁹ Johnson, *supra* note 117, at 304.

¹³⁰ *Scherer v. Switzerland*, 18 Eur. H.R. Rep. 276 (1994).

¹³¹ *Id.*

ECtHR,¹³² as the case was decided by the European Commission of Human Rights (“ECmHR”), which is a body that attempts to mediate cases and then sends cases to the ECtHR if it determines there has been a violation of the ECHR.¹³³ In *Scherer*, the ECmHR determined that there was a violation of article 10 and sent the case to the ECtHR for a decision on the merits, but the complainant died before the ECtHR could review the case.¹³⁴ Though no formal decision was reached, it is nevertheless relevant that the ECmHR determined article 10 protection could be extended to pornography. This is indicative of an ideological shift within the court.

Perrin v. United Kingdom, decided in 2005, is another case that illustrates the increasing emphasis the ECtHR is placing upon the issue whether the producer has taken measures to ensure that the public does not accidentally access the pornographic content it has produced.¹³⁵ In this case, the court affirmed the United Kingdom’s conviction of a website operator for obscenity, declining to extend article 10 protection.¹³⁶ The ECtHR noted that “the web page in respect of which the applicant was convicted was freely available to anyone surfing the Internet” and that the website operator intentionally offered pornographic content on the website’s free preview page in order to attract more business.¹³⁷ In drawing a distinction between content that is offered on a free preview page and content that exists behind a paywall barrier, the court implies that producers that put into place measures that prevent their content from being viewed accidentally by the public may be entitled to some level of constitutional protection.

When *Scherer* and *Perrin* are applied to CJIA 2008 and AVMS 2014, these laws, in certain respects, overstep the freedom of expression protections of article 10. If *Scherer* and *Perrin* stand for the proposition that producers who undertake efforts to prevent their content from being accidentally viewed by the public are entitled to article 10 protection, then producers who establish pay walls should be able to avail themselves of the protection of article 10 when charged with violations of AVMS 2014. In this scenario, the VOD regulatory scheme in the United Kingdom would largely return to the period when Rule 11 was in force, with producers being penalized for failing to prevent their content from being accessed by those without proper certification but still having the freedom to publish content stronger than R18. This would be a superior scenario, for producers would be able to distribute content stronger than R18 and minors would be safeguarded against exposure to such content by virtue of Rule 11.

For the same reason *Scherer* and *Perrin* would extend article 10 freedom of expression protection to certain producers charged with AVMS 2014 violations,

¹³² Johnson, *supra* note 117, at 306.

¹³³ *Id.* at 300.

¹³⁴ *Id.*

¹³⁵ *Id.* at 307.

¹³⁶ *Perrin v. United Kingdom*, App. No. 5446/03, 2005-XI Eur. Ct. H.R. (decided Oct. 18, 2005).

¹³⁷ *Id.*

protection would also be extended to many of those prosecuted under CJIA 2008 for possession of extreme pornography. If article 10 protection extends to those producers who take measures to prevent their pornography from being viewed accidentally by the public, then it is only logical to assume that article 10 protection would extend to all of those being charged with merely possessing pornography. The act of possessing pornography carries no risk of exposing the public to the pornographic material and, thus, should be protected under article 10. Producers of pornographic material should also be able to avail themselves of article 10 protection against CJIA 2008 charges, provided they took appropriate measures to prevent their material from being viewed by the public.

In any discussion of article 10 of the ECHR, it is important to note that the ECtHR has repeatedly found that works of artistic merit or political commentary are protected under freedom of expression.¹³⁸ In *Vereinigung Bildender Künstler v. Austria*, decided in 2007, the ECtHR held that a collage depicting Mother Teresa, Austrian politicians, and religious leaders engaging in sexual acts was protected under article 10.¹³⁹ In determining that the material should be afforded protection, the court noted that the collage was a caricature and concluded that works of social commentary should be protected by freedom of expression.¹⁴⁰

B. AVMS 2014 and CJIA 2008 Are Inconsistent with Article 8 Privacy Protections of the European Convention on Human Rights

Though the ECtHR did not consider whether constitutional privacy rights were implicated in *Scherer* and *Perrin*, the holdings of these cases suggest that pornography may be protected under the privacy protections of article 8 of the ECHR. If this is the case, then CJIA 2008 and AVMS 2014 are inconsistent with the ECHR.

Article 8 of the ECHR guarantees a limited right to privacy to individuals within member states.¹⁴¹ In particular, article 8 states that “everyone has the right to respect for his private and family life, his home and his correspondence.”¹⁴² As with article 10, article 8 provides exceptions for laws that are “necessary in a democratic society” in order to safeguard national security, public safety, health and morals, among other important government interests.¹⁴³ Article 8 also employs the same analysis as article 10 to determine whether a law is “necessary,” inquiring as to whether the law serves a pressing social need and whether it is constructed in a manner proportionate to achieve its goal.¹⁴⁴

¹³⁸ Johnson, *supra* note 117, at 308.

¹³⁹ *Vereinigung Bildender Künstler v. Austria*, 79 Eur. Ct. H.R. ¶ 38 (2007).

¹⁴⁰ *Id.* ¶ 33.

¹⁴¹ Convention for the Protection of Human Rights and Fundamental Freedoms art. 8, Nov. 4, 1950, 213 U.N.T.S. 222.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

The ECtHR has never held that article 8 protects an individual's right to possess or produce pornography, but privacy case law, along with *Scherer* and *Perrin*, suggests that the ECtHR may be amenable to extending article 8 protection to pornography in the future. In *Niemietz v. Germany*, decided in 1992, the court held that respect for private life extends beyond respecting an individual's desire to be protected from publicity.¹⁴⁵ The court stated that respect for private life also encompassed "the right to establish and develop relationships with other human beings."¹⁴⁶ When *Niemietz* is applied to the issue of whether pornography can be protected under article 8, it can be argued that pornography is not only a part of one's private life, but also a tool for developing and establishing relationships with others. In this sense, pornography should be protected under article 8.

Dudgeon v. United Kingdom, decided in 1981, offers further support for the extension of article 8 protection to pornography. In this case, the court held that "there must exist particularly serious reasons before interferences on the part of the public authorities can be legitimate."¹⁴⁷ Morality, the reason usually advanced for the regulation of pornography, should not be a suitably serious reason to warrant interference by the authorities in a person's private life.

While the ECtHR ultimately ruled against the complainant in *Pay v. United Kingdom*, decided in 2008, the ECtHR, in its holding, offers additional support for the extension of privacy protection to pornography.¹⁴⁸ In this case, a police officer was dismissed after his superiors learned that he was a member of a BDSM organization and that there were photos of him attending BDSM events on the Internet.¹⁴⁹ The court held that the United Kingdom government had not violated the police officer's privacy rights by dismissing him.¹⁵⁰ In its reasoning, the ECtHR stressed the fact that the police officer had failed to take measures to prevent photographs of himself attending BDSM events from appearing on the Internet.¹⁵¹ If *Pay* stands for the proposition that the extension of privacy rights depends on the extent to which an individual attempted to shield facts or behavior from the general public, then those who merely possess pornography should be protected under article 8, as they are most likely not advertising their consumption of the pornographic material to the public.

Taken together, *Niemietz*, *Dudgeon*, and *Pay* suggest that CJIA 2008 and AVMS 2014 are inconsistent with the privacy protections of article 8 of the ECHR. As pornography could be construed as a means to develop an individual's relationships with others, CJIA 2008, which criminalizes the possession of certain types of pornography, and AVMS 2014, which bans the production of content

¹⁴⁵ *Niemietz v. Germany*, 16 Eur. Ct. H.R. 97 (1992).

¹⁴⁶ *Id.* ¶ 29.

¹⁴⁷ *Dudgeon v. United Kingdom*, 45 Eur. Ct. H.R. (ser. A) at 14, ¶ 52 (1981).

¹⁴⁸ *Pay v. United Kingdom*, App. No. 32792/05, (2009) 48 Eur. H.R. Rep. SE2 (2008).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

stronger than R18, are arguably inconsistent with *Niemietz*. If morality is not a sufficiently important reason to interfere with an individual's private life, as per *Dudgeon*, then CJIA 2008 and AVMS 2014 are inconsistent with article 8, as these laws were allegedly motivated by concerns for morality. *Pay* also suggests CJIA 2008, if not AVMS 2014, is inconsistent with article 8, because individuals who merely possess pornography are not, in most cases, advertising their possession of the pornographic material to the public.

CONCLUSION

CJIA 2008 and AVMS 2014 should be repealed in order to safeguard the United Kingdom policy goals and resolve legal inconsistencies. Not only are CJIA 2008 and AVMS 2014 being applied in an overbroad manner, these laws establish the groundwork for greater state censorship, contribute to gender and sexual orientation-based discrimination, and harm the economy. Even if it is determined that the government has an interest in protecting morality, it must be conceded that the government is not achieving its goal with CJIA 2008 and AVMS 2014. The content the United Kingdom seeks to ban is still available for downloading on the Internet by the United Kingdom residents, as foreign producers offer content that is stronger than R18. The only means for the United Kingdom to achieve its goal of removing content stronger than R18 from the Internet is through wide-reaching Internet censorship. The restriction such censorship would place upon civil liberties would outweigh the government's concerns regarding public morals. Inasmuch as CJIA 2008 and AVMS 2014 are not only failing to achieve their stated goals but also are causing harm, they should be repealed.

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