



Internet Watch Foundation response to the government consultation on the Possession of Non-Photographic Visual Depictions of Child Sexual Abuse

1. Preamble

The government published a consultation paper on their plans to criminalise the possession of non photographic images of child sexual abuse on Monday 2nd April 2007. Closing date for the consultation is the 22nd June 2007.

The consultation paper seeks views on the creation of a new offence in respect of cartoons, drawings, computer generated images (CGI) and other non photographic representations of child sexual abuse.

The IWF response to the consultation document is shown below.

2. About the Internet Watch Foundation (IWF)

The IWF is the only authorised non statutory organisation in the UK operating an internet 'Hotline' for the public and IT professionals to report their exposure to potentially illegal content online.

Our aim is to minimise the availability of potentially illegal internet content, specifically:

- child abuse images hosted anywhere in the world
- criminally obscene content hosted in the UK
- incitement to racial hatred content hosted in the UK

We work in partnership with police and UK government departments, such as the Home Office and the Department of Trade and Industry, to influence initiatives and programmes developed to combat online abuse. This dialogue goes beyond the UK and Europe to ensure greater awareness of global issues and responsibilities.

We are funded by the EU and the online industry. This includes internet service providers, mobile operators and manufacturers, content service providers and telecommunications and software companies, as well as blue-chip and other organisations who support the IWF for CSR reasons.

Through the hotline reporting system, we help content providers to combat abuse of their services with a 'notice and take-down' service which alerts them to any potentially illegal content on their systems and simultaneously invites the police to investigate the publisher.

We also provide a comprehensive list of websites containing child abuse content for organisations such as ISPs, mobile network operators, software companies and search engines to block access to potentially illegal child abuse images. We also provide lists of newsgroups which regularly contain or advertise child abuse content.

3. Background

Concerns were raised by the police and children's welfare organisations that the market for fantasy images is growing and that the images themselves are at present legal to possess. Currently the making, taking, distributing and possessing indecent photographs or pseudo photographs of children is prohibited under the Protection of Children Act 1978, and the Criminal Justice Act 1988.



However, possession of non photographic images of child sexual abuse is not covered under current law. This includes for example: computer generated images, cartoons and drawings,

The IWF are represented on the Criminal Law Sub Group part of the Home Secretary's Task Force on Child Protection on the Internet which has been considering the issues raised by computer generated images (CGIs), drawings and cartoons which show graphic depictions of sexual abuse of children or child-like characters.

Following representations by police, it has become clear that cartoons, CGIs, or drawings which graphically depict children in a sexually abusive way are generally found alongside indecent photographs of children. Possession of indecent photographs of children is an offence and can result in a prosecution. However, police are aware of a case where they were unable to prosecute because the suspect was only found in possession of drawings and cartoons; no illegal photographs or pseudo-photographs were discovered. As it is currently legal to possess this material, the police must return it to the person in whose possession it was found regardless of what it portrays. Consequently it was not possible for the police either to prosecute this person under current law or to seize and forfeit the images.

4. Consultation Questions and IWF Response

The consultation paper states the intention that any new offence will apply only to material that is 'pornographic'. The term pornographic is not defined in the consultation paper so this term would need clarification.

The IWF already has the tried and tested procedures in place to deal with child sexual abuse content on the internet. If we were to become the non police reporting body for such content and if the defence condition were to be agreed as a general defence then there would be no compelling need for the public to report this content to us and consequently this should not have a significant impact on our resources. However we do have concerns that the public would indeed report this content to our hotline and, as we believe that many of our European and International partner hotlines do not include fantasy images as part of their legislation or remit, we may not be able to encourage other bodies abroad to take the content down. Very little, if any of the content appears to be hosted in the UK (see appendix 'A' attached).

Why act?

In the absence of research into the effects of these images on offenders and the general public, do you think the proposal to make it illegal to possess the material described in this consultation is nevertheless justified? Please feel free to explain the reasons behind your decision here.

No comment.

Options

Which of the options do you prefer?

Why do you think this option is the best?

Do you have another suggestion that you would like to submit?



We would agree with option 2, the preferred option. The creation of a new stand alone offence which would allow the material to be dealt with whilst not confusing it with actual images of child sexual abuse seems eminently sensible.

Defences

Do you think the defences will adequately cover all those instances that need to be excluded from criminalisation, for example: for the visual reconstruction of an offence for risk assessment purposes, legitimate research, etc?

We would agree that an adequate defence to possession in appropriate situations will be required. Should the government request the IWF to become the reporting body then we believe it is likely that the public will report such content to us and we would seek assurances, that on the occasions when it is necessary to gather information from potentially illegal web sites, IWF staff and appropriate IT professionals would be adequately covered by a defence of legitimate reason.

Material

Do you think that it is appropriate that a new offence should cover the sort of material described?

Do you feel there is any other material that needs to be captured?

We are aware that the majority of this material is available through dedicated message boards and portal sites which are primarily designed to distribute/trade in images of child sexual abuse. Many of the commercial sites which offer cartoons, drawings, computer generated images (CGI) and other non photographic representations of child sexual abuse do so by promoting the content as legal. The closeness of both genres of child sexual abuse images appears to show offenders' interest in both styles. Our core business relates to dedicated commercial and non commercial websites which offer images of child sexual abuse. We have interrogated our database and carried out searches based upon terms used to identify pre-pubescent fantasy images in order to estimate the volume of child abuse depictions that are likely to fail the new threshold and definition. The results are shown in appendix 'A' attached.

At present we are unaware of any other material which could be included. However the methods used by offenders and distributors to produce content are continually changing and so this aspect will need to be kept under review.

Content

Do you feel that the thresholds we have suggested are workable and will capture images at the right level of seriousness?

We understand the threshold set for the seriousness of fantasy images at level 3 as published by the Sentencing Guidelines Council. This standard is a workable foundation and IWF Hotline staff were able to assess depictions using the guidelines.

It would be helpful to have clarification on what would be considered a work of art and other material that might be regarded as being in the public good.

Penalties

Do you believe the maximum penalty of three years' imprisonment for possession is appropriate?



It is not appropriate for the IWF to comment on sentencing policy.

5. Impact assessment summary

- From our sample shown in appendix 'A' there appears to be a significant volume of non-photographic depictions which would be assessed as potentially illegal under the proposals in the consultation paper;
- Very little of this content appears to be hosted in the UK and should therefore not be reported to the IWF should the government request us to become the reporting body;
- However, reporters may not be aware of where the content is hosted and we are therefore likely to receive reports which require processing;
- Many of our European and international partner hotlines do not include fantasy images as part of their legislation or remit and we may not be able to encourage other bodies abroad to take the content down.

6. Contact information

For further information please contact:

Brian Wegg, Head of Secretariat by <mailto:secretariat@iwf.org.uk>

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Table 1 – IWF database

Period 1/01/07 to 26/04/07:

Total number of reports processed in the period	Number of reports described as cartoons or drawings	Cartoons as %-age of the total reports processed	Number of reports from column 2 assessed to be at level 3 or above	Number hosted in the UK
10,215	74	0.7	19	None

Notes:

1. Under the present legislation none of the 74 reports shown in column 2 above were potentially illegal. The reporting page on the IWF web site refers to images so many would be reporters may be aware that cartoon depictions of child abuse are not potentially illegal under present UK law.
2. 36 of the reports shown in column 2 of the table above appear to be hosted in the US.

Table 2 – sampling and assessment of a web search

A search of the web on various ‘cartoon fantasy’ terms known to refer to pre-pubescent children returned the following results:

Total search pages returned	Based on a random sample of 200, the percentage of the search results which contain child abuse depictions assessed to be at level 3 or above	Percentage of the sample assessed to be at level 3 or above which is hosted in the UK
68,600	7.5%	0%

Notes:

1. Of the sample child abuse depictions which were at level 3 or above, 76% appear to be hosted in the US.

A search of Usenet newsgroups

Using the same terms, which are known to refer to pre-pubescent children, around 100,000 Usenet newsgroups were searched and 17 were found to include the terms in the newsgroup name. A sample of the postings in the 17 newsgroups showed some child abuse depictions at level 3 or above.