

BBFC Research Report Commissioned by the DCMS: Further Research on Traffic to and Functionality of Adult Sites

Executive summary

The British Board of Film Classification (BBFC) has produced this research as requested by the Department for Digital, Culture, Media and Sport (DCMS) in order to provide information on traffic to, and functionality of, pornographic websites accessible by internet users in the UK and the implications for the protection of UK children.

This builds on the previous BBFC research report commissioned by the DCMS, *BBFC Assessment of Adult Sites' Functionality*, which the BBFC delivered on 19 October 2020. As commissioned, that report provided a 'snapshot' of the functionality of the most popular pornography sites accessed from the UK so as to assist the DCMS in assessing what proportion of those sites are likely to fall within scope of the proposed Online Harms legislation, at least initially.

This new report assesses the UK traffic to those sites, expressed in numbers of total unique visitors, as well as providing further information on the functionality of sites and information on sites' countries of origin. The findings of this report deepen the picture of the impact of the availability of these sites to UK internet users, including the large numbers of children who are currently able to access pornographic sites.

The report considers this impact in terms of accessibility and scope in relation to Online Harms legislation, which is intended to cover sites that enable user interaction and/or the sharing of user-generated content. As before, and to keep the findings consistent with the previous report, the assessments in this report are based on the top 200 pornographic sites ranked according to UK traffic in the month of August 2020. This represents only a small proportion of the millions of pornographic websites online.

Key findings:

- Just under two thirds (64%; 128 sites) of the top 200 pornographic sites will likely fall within scope of the proposed Online Harms legislation as set out in the Government's December 2020 consultation response. This means that a significant proportion of the top 200 pornographic sites (36%; 72 sites) do not enable interaction and/or the sharing of user-generated content and therefore will not be covered by the proposed legislation.
- The top 200 pornographic sites received 76.05% of the total UK visits to the adult sites captured by the data for August 2020. 56.63% (15,367,483 people) visited, among other sites, the most-visited pornographic site (site #1)¹. 35.31% (9,581,230 people) visited, among other sites, the second-ranked pornographic site (site #2). This shows that the top 200 pornographic sites represent a clear majority of the traffic to UK adult sites and they are therefore a reasonable study sample. However,

¹ Sites have been anonymised as data may be commercially sensitive.

it also means that if any one of these top sites were to take themselves out of scope of the legislation, this would have an immediate and disproportionate impact on traffic going to sites not covered by the proposed Online Harms legislation.

- 15.7% of traffic across all ages to the top 200 pornographic sites goes to sites that do not enable user interaction and/or the sharing of user-generated content and therefore which are currently out of scope. This would increase to 34.94% if the top three pornographic sites were to take themselves out of scope.
- Among UK children's desktop visitor traffic to the top 200 pornographic sites, 12.29% goes to sites that do not enable user interaction and/or the sharing of user-generated content and therefore which are currently out of scope. This would increase to 45.5% if the top three pornographic sites were to take themselves out of scope.
- These figures are a significant underestimation of UK children's total access to pornographic websites. This is because the data does not account for children's access via mobile devices, which are likely to account for the vast majority of children's access to pornographic sites. It also does not account for children's access to the millions of pornographic sites not captured by the data presented.
- 126 of the top 200 pornographic websites carry some degree of country of origin information. Approximately 40% (50 sites) of these sites claimed to be based in Cyprus. Only four sites claimed to be based in the UK. This leaves 74 top-200 pornographic sites the country of origin of which will prove more difficult to establish.

Recommendations:

1. User-generated content/user interaction does not bring all pornographic content into scope of regulation and it leaves open a potential loophole which could be exploited. One solution would be to consider extending the scope to include all sites that market themselves as pornographic.
2. If the Government is not minded to agree with recommendation 1, we strongly recommend that the Online Harms legislation define very clearly what is meant by user-generated content and user interaction. The definition should include minor interactions such as "likes" or the facility to "rate" content, and content partner programs should be expressly included as a form of user-generated content.
3. There needs to be a regulatory level playing field irrespective of jurisdiction to avoid incentivising sites to seek ways to avoid regulation – for example, by removing certain functionalities to ensure they fall out of scope.

Please note that children's behaviour will very likely change if measures are put in place to restrict their access to their current site(s) of preference but other sites are allowed to fall out of scope. Traffic by children will simply divert to sites where there are no preventive mechanisms in place. There are already 72 out-of-scope sites in the top 200 alone. The risk is that such sites will very quickly become normalised as the 'go-to' destinations for pornography access by UK children. If these unregulated sites also attract increased traffic by adults, then this risks incentivising sites that are subject to regulation to take steps to put themselves out of scope, for example by removing user-generated content and user interaction functionality.

Introduction and background

The BBFC has produced this research at the request of the DCMS, further to a previous study into the functionality of the top 200 pornographic websites accessed in the UK during

August 2020, *BBFC Assessment of Adult Sites' Functionality*, which the BBFC delivered on 19 October 2020. The purpose of this new research is to provide the DCMS with a greater understanding of:

1. The volume of UK traffic to each of the top 200 pornographic sites;
2. The overall proportion of UK traffic to adult sites that the top 200 pornographic sites account for individually and collectively;
3. The proportion of UK traffic by children (via desktop only) to each site within the top 200 pornographic sites;
4. Which of the top 200 pornographic sites the BBFC has determined enables user interaction and/or the sharing of user-generated content;
5. Country of origin and the top 200 pornographic sites.

This will assist the DCMS in assessing what proportion of sites are likely to fall within scope of the Government's Online Harms proposals, at least initially, and the likely impact this will have on the legislation's child protection aims. As per the Government's consultation response published on 15 December 2020, the new regulatory framework will apply to companies whose services "host user-generated content which can be accessed by users in the UK" and/or "facilitate public or private online interaction between service users, one or more of whom is in the UK".

Of course, the top 200 pornographic websites will vary month on month, and the introduction of legislation in the UK is certain to have a considerable impact on the levels of traffic if some sites are required to put measures in place but others are not. Such a market distortion is likely to incentivise sites to remove the relevant functionalities in order to avoid regulation and thereby maintain a commercial advantage over their competitors.

Methodology

Determining the top 200 pornographic sites from the data list

For the first stage of the research, the DCMS asked the BBFC to focus on the top 200 pornographic websites accessed from the UK. The BBFC derived this research from a list of adult sites ranked according to UK traffic during the month of August 2020, which was supplied to the BBFC by Comscore.

Determinations made by the BBFC are based on a reasonable sampling of each site and have been made in good faith. When considering the sites, we excluded sites that did not upon reasonable inspection appear to be primarily pornographic. That is not to say that some of these sites did not include some pornographic material, but pornography did not appear to be their core offering. We excluded the following sites on this basis:

- Nine dating or 'hook-up' sites;
- Two online stores specialising in sex toys or lingerie;
- One 'lifestyle' site – albeit one with business connections to a popular pornographic platform;
- One site offering web hosting services;
- One non-pornographic content aggregator site;
- One site hosting a survey for users of a popular pornographic platform that featured only 'glamour' imagery.

The BBFC also excluded, by necessity, any site with a name that suggested its core offering is illegal content – for example, extreme pornography. We excluded one site on this basis.

We also excluded sites that would not load or that appear to have closed down or relocated to a different URL. We excluded eight sites on this basis.

In total, we excluded 24 sites.

Where we excluded sites, we included an equivalent number of additional sites from the next position on the list (site #201, #202, etc.) to ensure that our assessment was based on a sample of the 200 most-visited sites that we consider to be primarily pornographic.

Part 1: The volume of UK traffic to each of the top 200 pornographic sites

We have based all our analysis on data provided to the BBFC by Comscore. The data shows internet traffic represented by UK users in the month of August 2020 in Comscore's XXX Adult category. The data provided includes the total number of unique visitors/viewers to each site. Comscore presented the list ranked in descending order of unique visitors/viewers per site.

It should be noted that Comscore's XXX Adult category does not account for every adult site on the internet, of which there are millions. It is limited to the number of sites that meet Comscore's minimum reporting standards (MRS) each month.² For August 2020, the list comprised 891 sites.

Part 2: The overall proportion of UK traffic to adult sites that the top 200 pornographic sites account for individually and collectively

The BBFC has made an assessment of the proportion of the traffic data accounted for by each individual site on the top 200 pornographic sites list.

From the list of the 891 websites captured by the data for August 2020, we added percentages calculated according to various criteria. These criteria form the basis of our analysis of the site traffic. Again, we wish to point out that the list of 891 sites represents only a small fraction of the millions of pornographic sites in existence. Where relevant, we have included data for the 24 sites we have not considered to be primarily pornographic.

a) Each of the top 200 pornographic sites as a proportion of the list (with internet visitors visiting multiple sites)

Comscore's data shows the number of *individuals* who have visited each site. But this does not mean that each individual only visited *one* site on the list. Many of these individuals will have visited *more than one* site on the list, as we can determine from the data:

- If we add up the total unique visitors/viewers to just the top three sites listed – site #1 (15,367,483), site #2 (9,581,230) and site #3 (8,136,794) – the total is 33,085,507, which exceeds the figure for unique visitors/viewers to all adult sites on

² This number varies from month to month. A site can be reported if it has at least 16 unique visitors in the desktop production sample and, in this case, mobile platforms are also reported. An entity can also be reported if it meets the Mobile MRS of at least 6 raw panellists for an individual platform (Android phones, iOS phones or iPads), even if it does not meet the desktop threshold, but in this case, the desktop audience will not be reported.

the list (27,137,588 visitors/viewers).

- Adding up just the top six sites (total: 55,932,850) exceeds the figure for total UK unique visitors/viewers across *the internet in total* for August 2020 (50,938,292 visitors/viewers).
- These figures indicate an overlap due to individuals visiting more than one site.

Therefore, we have analysed the unique visitors/viewers to adult sites who visited this site *among other sites* expressed as a percentage of the 27,137,588 unique visitors/viewers across the adult sites on the list. This shows that:

- The most-visited site, site #1, received 56.63% of UK visitors to adult sites on the list. To put it another way, 56.63% of visitors to *any* adult sites on the list included site #1 (among other sites) in their visits;
- Site #1 received far more visitors than even the second-ranked site, site #2 (35.31%);
- Each of the top 10 pornographic sites received more than 15% of UK visitors to adult sites on the list;
- The 20th most-visited site, site #20, is the highest-ranked site on the list to have received more than 5% of UK visitors to adult sites on the list.

This shows the top-heavy nature of the ranked list. This is reflected in our findings that consider unique visitors as a proportion of total UK internet users (rather than as a proportion of visitors/viewers to the adult sites on the list).

- Site #1 received 30.17% of all UK internet users. In other words, 30.17% of UK visitors to the internet in August 2020 visited site #1 (among other sites);
- Again, site #1 was by far the most-visited pornographic site. The second-ranked site, site #2, received 18.81%;
- Each of the top 10 pornographic sites received more than 8% of UK internet visitors.

This market dominance of a few major companies means that a change in business model in reaction to regulation, by way of removing the relevant functionalities to avoid regulation, would have an immediate and significant detrimental effect. For example, if site #1, which the data shows to be the most popular site in terms of unique visitors, were to turn off the functionality that defines it as being in scope, this would mean that the proportion of out-of-scope sites that users are accessing would increase drastically from 15.7% to 24.64%, and the proportion of out-of-scope sites that children are accessing would increase drastically from 12.29% to 35.18%. The unknown, which this research cannot address, is the level to which they would be exposed to currently less popular sites that did not have any age restrictions because they are out of scope. We discuss this impact in relation to all ages in more detail in section 2e below, and we analyse traffic from children to the top 200 pornographic sites in Part 3.

b) Each of the top 200 pornographic sites as a proportion of the list (counting each individual visitor as hypothetically having visited only one site)

Because many internet users will visit more than one site, there is an overlap in the unique visitors/viewers per site across sites. To assess what proportion of the total adult category the top 200 pornographic sites represent without the overlap of visitors visiting multiple sites, we have produced figures based on each unique visitor/viewer hypothetically having visited only one site. We have done this by adding up the individual unique visitor/viewer figures for the sites on the list to produce a new total of 226,198,476. This is clearly above the figure for the visitors to the adult sites on the list (27,137,588 visitors/viewers) and the UK total internet audience (50,938,292 visitors/viewers) for August 2020. The benefit is that

the new total of 226,198,476 removes overlap in visitor numbers so as to arrive at a hypothetical total number of individual visitors. This allows for a comparison of sites expressed as percentages relative to each other and to the list in general.

We have therefore analysed the percentage of hypothetical individual visitors to each of the top 200 pornographic sites. From this, we can say that:

- 6.79% of hypothetical individual visitors to adult sites across the list of 891 sites reported by the data visited site #1 (and not other sites).
- The second-ranked site, site #2, had 4.24% of hypothetical individual visitors (again, only visiting site #2).
- Only the top 15 sites received more than 1% of hypothetical individual visitors each.

Again, this shows the top-heavy nature of the list, indicating the large impact on accessibility to sites out of scope if even the top few sites were to take themselves out of scope.

c) Each of the top 200 pornographic sites as a proportion of the list (counting each individual visitor as hypothetically having visited only one site), excluding the first 24 non-pornographic sites on the list

To exclude the 24 sites we determined not to be primarily pornographic from our assessment of proportions of the sites on the list would be to introduce a potential skewing of the figures. This is because, in visiting and assessing sites working down from the top of the list until we arrived at 200 pornographic sites, we have visited and assessed only the first 224 sites on the list, as these are the top 200 pornographic sites and the *first* 24 sites excluded for not being primarily pornographic. Across the list of 891 adult sites captured by the data, it is reasonable to consider that those 24 sites are not the only sites in the category that would not be considered primarily pornographic. Excluding 24 out of 224 sites represents an exclusion rate of 10.71%; applying this exclusion rate to the other 667 adult sites captured by the data suggests that a further 71 sites might be excluded from this list.

As such, to assess the top 200 pornographic sites as a proportion of the sites captured by the data while excluding only the first 24 excluded sites might result in other sites that should be excluded being instead included as part of the assessment. All of our analysis thus far therefore takes into account those 24 sites.

Nevertheless, we have set out below in paragraph (d) figures that do exclude those top 24 sites, as these illustrate the effect of excluding the 24 sites we have excluded as not primarily pornographic. The result is a small increase in the percentage of visitors to many of the top 200 pornographic sites.

d) The top 200 pornographic sites collectively as a proportion of the list

We can also apply the above criteria in b) and c) to an assessment of what the top 200 pornographic sites represent collectively as a proportion of the list. (The criterion in a) is not applicable in the same way, due to overlap of visitors between sites.)

Assessing the top 200 pornographic sites collectively counting each individual visitor as hypothetically visiting only one site:

- the top 200 pornographic sites represent 76.05% of the list
- the top 100 pornographic sites represent 65.39% of the list
- the top 50 pornographic sites represent 54.62% of the list
- the top 20 pornographic sites represent 43.89% of the list
- the top 10 pornographic sites represent 33.44% of the list

- the top 5 pornographic sites represent 21.66% of the list

Assessing the top 200 pornographic sites collectively counting each individual visitor as hypothetically visiting only one site, and excluding the further 24 non-pornographic sites from the total:

- the top 200 pornographic sites represent 81.75% of the list
- the top 100 pornographic sites represent 70.29% of the list
- the top 50 pornographic sites represent 58.72% of the list
- the top 20 pornographic sites represent 47.18% of the list
- the top 10 pornographic sites represent 35.95% of the list
- the top 5 pornographic sites represent 23.29% of the list

From the above, it is clear that the top 200 pornographic sites represent a clear majority of the traffic to the UK adult sites captured in the August 2020 data. The different methodologies used to interpret the data show that this proportion is between 76.05% and 81.75% of traffic.

e) UK traffic to sites likely to be in scope of the Online Harms legislation (based on top 200 pornographic sites)

We have also made an assessment of traffic based on sites that either do or do not have user interaction or the sharing of user-generated content. We have derived this from the list we produced in the previous report.

To do this, we have focused exclusively on the top 200 pornographic sites and excluded the 24 sites within Comscore's top 200 that we determined not to be primarily pornographic.

We have determined that:

- Counting each individual visitor as hypothetically visiting only one site, 84.3% of traffic across all ages to the top 200 pornographic sites goes to sites that enable user interaction and/or the sharing of user-generated content;
- This means that 15.7% of traffic to the top 200 pornographic sites goes to sites that do not enable user interaction and/or the sharing of user-generated content.

Pornographic websites that do *not* enable user interaction and/or the sharing of user-generated content and are therefore not required to put any restrictions in place are likely to see a significant and very rapid increase in volume of traffic. This lack of a commercial level playing field in turn would incentivise *other* sites to remove such functionality as well in order to avoid regulation themselves rather than be commercially disadvantaged. We know from our dealings as Regulator under Part 3 of the Digital Economy Act 2017 that adult sites would be extremely likely to develop and have in place contingency plans for removing themselves from the scope of regulation if they perceived any degree of competitive disadvantage through obeying the legislation. This is why it is important to ensure there is a regulatory level playing field, so no site is incentivised not to comply with the legislation.

- If site #1 were to take itself out of scope, the percentage of traffic to the top 200 pornographic sites that goes to sites that do not enable user interaction and/or the sharing of user-generated content would increase drastically from 15.7% to 24.64%.
- If the top three pornographic sites were to take themselves out of scope, the percentage of traffic to the top 200 pornographic sites that goes to sites that do not enable user interaction and/or the sharing of user-generated content would increase drastically from 15.7% to 34.94%.

If sites were minded to avoid regulation, they may find it very easy to make similar changes to remove user-generated content and user interaction functionality entirely, so as to take themselves out of the scope of Online Harms.

If that were to happen, it is reasonable to assume that a proportion of UK adults who view pornography online would gravitate towards the sites that are out of scope, because those sites would be more easily accessible. This would result in a disruption to the level playing field, as there would be a perceived and actual advantage among those sites when compared with the sites in scope, with a consequential increased risk of children being exposed to pornography. We say more on the impact on children in Part 3.

Part 3: The proportion of UK traffic by children (via desktop only) to each site within the top 200 pornographic sites

In the UK, Comscore tracks data for users aged over 13 on desktop and over 18 on mobile. Users aged 6-12 are included via desktop (but not mobile) too: their usage is determined using an inferred methodology that comes from knowing the number of children in the household and the ages of those children. Panellists consent to Comscore software installation on behalf of all users of a device, including children. The software uses a mix of keystrokes, logins and site visitation to assign each session to a panellist, to know when users below the age of 13 are using the desktop computer.

Accordingly, data on traffic by children does not account for visits on mobile devices. Research carried out by Revealing Reality on behalf of the BBFC in 2019 found in qualitative interviews with young people that "Mobile phones were the most popular device by which to access these pornographic sites. Boys described often using 'whatever was to hand', but in general stated a preference for mobile phones due to their ease of use and portable nature."³ Therefore, in presenting the following analysis of traffic represented by children, we must emphasise the importance of reading these figures in the context of the likely substantial additional access by children to pornographic sites through mobile devices.

a) Desktop traffic from UK children to each of the top 200 pornographic sites

We have analysed the desktop traffic by children to the top 200 pornographic sites. We have compiled the data on the children from three separate lists provided by Comscore, of users aged 6-12, users aged 13-14 and users aged 15-17. The data shows desktop traffic through the same criteria of unique visitors/viewers as has been used in the earlier analysis in respect of all ages. Again, we note that the data for children comprises desktop access only.

Because our analysis of the proportion that children represent of total UK traffic is, as requested, limited to the top 200 pornographic sites, we have analysed desktop traffic data for children for just the 224 sites that comprise our top 200 pornographic sites and the 24 sites we determined not to be primarily pornographic. Nevertheless, to show the extent of desktop traffic from children to the other sites on the list captured by the data, we have included UK total internet audience and unique visitors/viewers (both desktop only) for the children visiting adult sites on the list. The data shows that 560,776 UK children accessed one or more of the adult sites on the list in August 2020 via desktop. Again, as this figure represents desktop access *only*, the number of pornographic websites being viewed by UK children each month is likely to be much higher than the figures presented.

³ BBFC and Revealing Reality, *Young people, Pornography and Age-verification* (online publication 2020), p.22.

b) Desktop traffic from UK children to top-200 pornographic sites that are likely to be in scope of the Online Harms legislation

We have also made an assessment of traffic based on sites within the top 200 pornographic sites that either do or do not have user interaction or the sharing of user-generated content. We have derived this from the list we produced in the stage one research.

We have determined that:

- Counting each individual visitor under 18 as hypothetically visiting only one of the top 200 pornographic sites, 87.71% of children's desktop traffic goes to sites within the top 200 pornographic sites that enable user interaction and/or the sharing of user-generated content;
- This means that 12.29% of children's desktop traffic goes to sites within the top 200 pornographic sites that do not enable user interaction and/or the sharing of user-generated content.

Our comments on our assessment of traffic based on user interaction and/or user-generated content functionality across all age groups apply here too: pornographic websites that do *not* enable user interaction and/or the sharing of user-generated content and are therefore not required to put any restrictions in place are likely to see a significant and very rapid increase in volume of traffic. This lack of a commercial level playing field in turn would incentivise *other* sites to remove such functionality as well in order to avoid regulation themselves rather than be commercially disadvantaged.

- If site #1 were to take itself out of scope, the percentage of traffic represented by UK children to the top 200 pornographic sites that goes to sites that do not enable user interaction and/or the sharing of user-generated content would increase drastically from 12.29% to 35.18%.
- If the top three pornographic sites were to take themselves out of scope, the percentage of traffic represented by UK children to the top 200 pornographic sites that goes to sites that do not enable user interaction and/or the sharing of user-generated content would increase drastically from 12.29% to 45.5%.

From these figures, we can see the drastic impact on traffic by UK children to sites that would fall out of scope of the Online Harms legislation if the most popular sites were to take themselves out of scope.

Part 4: Which of the top 200 pornographic sites the BBFC has determined enables user interaction and/or the sharing of user-generated content

Such an analysis was the core focus of the first stage of research. In making a determination, the BBFC assessed:

- Whether each site within the top 200 pornographic sites allows users to share user-generated content. We assessed this based on whether or not a site offers a mechanism for users to upload or live-stream content. We have accepted a 'content partner program' or similarly termed program to be indicative of a means of upload,

though this is quite a favourable interpretation with which others (site operators in particular) might disagree. They could credibly argue that a 'partner program' is a business-to-business commercial relationship distinct from a more 'general' user-generated functionality, and therefore that sites we have considered in scope solely on this basis should not be subject to regulation. We therefore recommend that the Online Harms legislation define very clearly what is meant by user-generated content and user interaction functionality. We recommend further that partner programs be expressly included in the definition of user-generated content and user interaction functionality. Doing so will assist the Online Harms regulator to provide guidance on which sites will be in scope and provide legal clarity for the industry.

- Where an upload mechanism or partner program is not apparent, we have reviewed the site's terms of service, which may indicate that a site allows its users to share user-generated content even if the means by which it does so are not obvious. We cannot be confident that these sites do genuinely offer this functionality, however, as in many cases the terms of service appear to be dubiously generic rather than specific to an individual site. Therefore, we have not considered these sites to enable the sharing of user-generated content. Sites that link to external live-streaming platforms rather than providing such a mechanism themselves have not been considered to enable live-streaming functionality.
- Whether each site within the top 200 pornographic sites allows users to interact with one another, e.g. by comments or live chat. We assessed comment functionality based on whether each site within the top 200 pornographic sites offers users the opportunity to post written remarks below a video clip, image or any other kind of content. We assessed live chat functionality based on whether each site provides a mechanism by which users may interact with one another or with performers in real time. The latter is an essential component of 'cam' services. We have not included sites which offer users the chance to 'rate' content – for example, with a 'thumbs up' or 'thumbs down' – as we were concerned that this would be too generous an interpretation of 'user interaction'. We recommend that the legislation define precisely what is and what is not meant by user interaction, and whether the facility for users to 'rate' content would bring a site into scope. To capture as many sites as possible, we recommend that it should.

Our analysis showed that just under two thirds (64%; 128 sites) of the top 200 pornographic sites will likely fall within scope of the proposed Online Harms legislation as set out in the December 2020 consultation response; and that there will remain a significant proportion (36%; 72 sites) not covered by the proposed legislation. Furthermore, we should reiterate that the scope of our report excluded visiting more than the first 224 sites (the top 200 pornographic sites and the first 24 sites we excluded for not being primarily pornographic) on the list of sites captured by the data. And there are millions more pornographic sites that are outside the scope of this report.

For more on the first stage of the research, please see the report delivered to the DCMS on 19 October 2020.

Part 5: Country of origin and the top 200 pornographic sites

The BBFC has made an assessment of the top 200 pornographic sites' countries of origin by reviewing documentation published on those sites. This includes literature such as the Terms and Conditions, Privacy Policy or Digital Millennium Copyright Act (DMCA) statement. We have searched these documents and others available using the following terms:

- address
- contact
- correspondence
- country
- court
- jurisdiction

Such documentation is not always available, and so we have not been able to make an assessment with regard to every one of the top 200 pornographic sites. In addition, it should be noted that there is no guarantee that sites' own claims about their countries of origin will be accurate. Furthermore, sites may have footprints in multiple territories, and so it is not straightforward to establish country of origin with any certainty. We found in reviewing sites' documentation that a number of sites listed multiple addresses, for instance one address in Cyprus and one address in the USA.

Of the 126 sites⁴ within the top 200 pornographic sites that the BBFC was able to make a determination on:

- Approximately 40% (50 sites) claimed to be based in Cyprus (this is 25% of the top 200);
- Approximately 16% (20 sites) claimed to be based in the Netherlands (10% of the top 200);
- Approximately 13% (17 sites) claimed to be based in the USA (8.5% of the top 200);
- Approximately 6% (8 sites) claimed to be based in the British Virgin Islands (4% of the top 200);
- Other sites claimed to be based in locations including the Czech Republic (7 sites), Belize (6 sites), Anguilla (5), the UK (4 sites), the Republic of Seychelles (3 sites) and Luxembourg (3 sites).

Only four of the top 200 pornographic sites claim to be based within the UK. This underlines the need for the Online Harms regulator to be designated with enforcement powers that are effective regardless of from where in the world a site is operating.

Concluding remarks

The findings in this report show that just under two thirds (64%; 128 sites) of the top 200 pornographic sites will likely fall within scope of the proposed Online Harms legislation as set out in the Government's December 2020 consultation response. There will remain a significant proportion (36%; 72 sites) not covered by the proposed legislation.

The top 200 pornographic sites represent a clear majority of the UK traffic to the adult sites captured in the August 2020 data; the different methodologies used to interpret the data, as noted on p.7, show that this proportion is between 76.05% and 81.75% of traffic to the adult sites on the list. This leaves between 18.25% and 23.95% of traffic being accounted for by adult sites that are on the list but which have fallen outside of the terms requested in this report.

⁴ N.B. Sites which claimed to be based in more than one territory will have been counted for each territory.

In terms of proportion of traffic represented by sites from within the top 200 pornographic sites likely to be in scope in the Online Harms legislation, if we count each individual visitor as hypothetically visiting only one site, 84.3% goes to sites that enable user interaction and/or the sharing of user-generated content. This means that 15.7% of traffic within the top 200 pornographic sites goes to sites that do not offer these functionalities.

In terms of sites from within the top 200 pornographic sites likely to be within scope in the Online Harms legislation, if we count each individual child as hypothetically visiting only one of these sites, 87.71% of UK children's desktop traffic goes to sites captured by the legislation. This means that 12.29% of UK children's desktop traffic, from within the top 200 pornographic sites, goes to sites not captured by the legislation. The market dominance of a few major companies means that a change in content in reaction to regulation, by way of removing the relevant functionalities to avoid regulation, would have an immediate and significant impact. Furthermore, there would be a drastic impact on traffic by UK children to sites not captured by the legislation if the most popular sites were to take themselves out of scope.

And it should be emphasised that these figures for children's traffic represent desktop access *only*. The number of pornographic websites being viewed by UK children each month is likely to be much higher than the figures presented in this report.

As per the BBFC's previous report, we should reiterate that in order to be successful, measures to protect children from online pornography must apply equally to all pornographic sites accessible from the UK. Without a level playing field globally, and the deterrent of swift and effective enforcement action, there is a very real risk that sites will not comply with the requirements. For example, it would be relatively straightforward for many of the top 200 pornographic sites to remove the facility to share user-generated content or interact with other users in order to avoid regulation and thereby gain a commercial advantage over competitors.

This is why the regulatory level playing field is so vitally important to the success of the regulatory regime to protect children with regard to pornographic websites. The DCMS may therefore wish to reconsider the scope of the legislation in order to capture *all* commercial pornographic websites accessible from the UK irrespective of whether they contain user-generated content in order to avoid a regulatory loophole.

BBFC
11 January 2021