



Department for
Science, Innovation
& Technology

Pornography Regulation, Legislation and Enforcement

Call for Evidence

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January 2024



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Foreword

Foreword from Baroness Gabby Bertin, the Independent Lead Reviewer:

We know that pornography can have significant effects on relationships and people's attitudes towards sex, especially those of children and young people.

Research published by the Children's Commissioner shows that young people are frequently exposed to coercive and degrading sexual acts online; 79% encounter such content before the age of 18. Additionally, nearly half of young people between the ages of 18 and 21 have directly experienced a violent sexual act; with girls significantly more likely to have been the victims than boys¹.

The All-Party Parliamentary Group on Commercial Sexual Exploitation's [recent Inquiry](#) into Pornography explored its association with violence against women and girls and highlighted the scale and nature of online pornography depicting sexual violence.

For these reasons, I welcome the significant steps the Government has already taken to better protect children and young people online through the Online Safety Act 2023. This will ensure pornography providers, as well as user-to-user providers which allow pornography, will need to use highly effective age verification or age estimation to prevent children from encountering pornography on their service. Additionally, all user-to-user and search services in scope of the Act must design their services to prevent people from even encountering priority illegal material online, which includes illegal pornography and child sex abuse and exploitation material.

I am proud to be part of this next step in supporting the Government's ambition to make the UK the safest place in the world to be online, through leading this Independent Review on pornography in the UK.

This Review will explore and uncover vital evidence to build a collective understanding of the impact pornography has on viewers, helping us to comprehend the impact pornography has on wider societal views and behaviours. In turn, it will help ensure law enforcement has the tools to identify and tackle illegal, pornographic content, as well as child sex abuse material that appears on pornography sites.

I want to hear from as many voices as possible to support in this endeavour, gathering a wide variety of evidence, to present robust, actionable recommendations upon the Review's conclusion.

This Call for Evidence will help us do exactly that. It will gauge public awareness and assess the evidence in areas such as regulation, legislation, law enforcement, emerging AI-generated

¹ ['A lot of it is actually just abuse' - Young people and pornography, January 2023, Children's Commissioner](#)

pornography, and potential links between pornography and violence against women and girls². This process will also help us gauge any associations between specific types of pornographic content, exposure and viewing habits and the impact this has on attitudes towards sex and relationships, particularly amongst young men and women, as well as secondary school-age children.

We also want to hear from people across the public, private, and third sectors whose experience and expertise can shed light on the associations between the pornography industry and the abuse, exploitation and trafficking that may pervade it. This includes the Crown Prosecution Service, the police, regulators, industry, and civil society so that we leave no stone unturned in identifying these practices.

Our goal is twofold; to ensure we have the right legislation and regulation in place to support law enforcement, industry and the criminal justice system in tackling illegal pornography practices, but also to support parents and carers in keeping children safe online.

I want to thank everyone supporting us in this vital work. Your insights and contributions to this Call for Evidence will be invaluable in ensuring that the rules governing pornography are fit for purpose and allow us to tackle exploitative, abusive and illegal behaviours wherever they occur.

Working together, we can keep people safe online and help them build healthy, happy, flourishing relationships offline too.

² Tackling Violence Against Women and Girls Strategy (2021). www.gov.uk/government/publications/tackling-violence-against-women-and-girls-strategy/tackling-violence-against-women-and-girls-strategy#understanding-violence-against-women-and-girls

Contents

Foreword	3
Foreword from Baroness Gabby Bertin, the Independent Lead Reviewer:	3
General information	6
Why we are issuing this call for evidence	6
Consultation details	6
How to respond	8
Confidentiality and data protection	8
Quality assurance	8
The proposals	9
Section 1.0: Overview of Call for Evidence Areas	9
Section 2.0 Regulatory and Legislative Regimes	11
Section 2.1: Regulatory Regimes	13
Section 2.2: Criminal Offences	22
Section 3.0: Information Resources on Pornography Use	26
Information Resources on Pornography Use for Children	26
Information Resources on Pornography Use for All Ages	26
Section 4.0 - Call for Evidence	27
Call for Evidence Questions	27
The Prevalence of Illegal Pornography Online, and the Impact of Legal Online Pornography	27
Comparing the Regulation of Pornographic Content accessed via physical media, broadcast or video-on-demand, against the regulation of Online Pornographic Content accessed via Commercial Pornography Websites and User-to-user Sites	30
The Response to Illegal Pornographic Content and Exploitation and Abuse in the Pornography Industry	31
Education and Information Resources on Pornography	32
Next steps	34

General information

Why we are issuing this call for evidence

The Independent Pornography Review is a prompt response to calls for action from those concerned with the prevalence and impact of illegal pornographic content and child sexual exploitation and abuse on pornography sites and social media. It is separate to, but builds on, the Online Safety Act 2023, which requires social media companies and pornography services to restrict children's access to pornography.

As the way we consume media and access content rapidly changes, the Review will investigate gaps in UK regulation which allow exploitation and abuse to take place online, as well as identifying barriers to enforcing criminal law. While the criminal law has been updated in recent years to tackle the presence of extreme and revenge pornography, there are currently different regimes that address the publication and distribution of commercial pornographic material offline, such as videos, and online. The government wants to ensure any pornography legislation and regulation operates consistently for all pornographic content.

The Review will take an evidence-based approach to develop recommendations for the Government on how to best to achieve the Review's objectives. To help ensure these recommendations are robust, it is important the Review gathers and considers a broad range of views and evidence relating to pornographic content.

This Call for Evidence has therefore been launched to allow the UK public, subject matter experts, and organisations to contribute, seeking insights to help strengthen the evidence base surrounding each of the Review's objectives.

Consultation details

Issued: 09.00 11th January 2024

Respond by: 23.59 7th March 2024

Enquiries to:

Independent Pornography Review Secretariat
Department for Science, Innovation and Technology
5th Floor
100 Parliament Street
London
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Tel: N/A

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Consultation reference: Call for evidence: Pornography regulation, legislation & enforcement

Audiences:

We are seeking a wide range of views across the public including, but not exclusive to: academics, civil society organisations, law enforcers, the industry, pornography performers and makers and pornography viewers.

Territorial extent:

Including devolved administrations.

How to respond

Respondents should submit any answers in Qualtrics at the link below. Please note, respondents do not have to answer every question in this call for evidence and can submit answers to only the questions most relevant to them if preferred.

If respondents are unable to submit answers via Qualtrics, please send answers to pornographyreview@dsit.gov.uk.

Respond online at: https://dsit.qualtrics.com/jfe/form/SV_1BpMNJHVXVpz1jw

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@dsit.gov.uk.

The proposals

Section 1.0: Overview of Call for Evidence Areas

The Government wants to ensure that any legislation and regulation operates appropriately for all pornographic content. It is interested in ensuring that there is an effective regulatory and criminal justice system (policing, prosecution, courts, prisons and probation) response to online illegal pornographic material, and exploitation and abuse in the pornography industry. To help deliver this, the government launched the Independent Review of pornography regulation, legislation and enforcement on 1st December 2023.

While the Government does not seek to regulate the private lives or sexual activity between consenting adults, it is important that legislation be in place to protect the vulnerable from harm and ensure public safety. This is why the Review will involve a comprehensive assessment of the legislation, regulation and enforcement of online and offline pornographic content. The Review will take an evidence-based approach to developing a range of recommendations for the government on how to best to achieve the Review's objectives.

To help ensure the Review's final recommendations are robust, it is important the Review gathers and considers a broad range of views and evidence relating to pornographic content between individuals of both the opposite sex and same sex. This Call for Evidence has been launched to allow the UK public, subject matter experts, and organisations to contribute. The Call for Evidence is seeking insights to help strengthen the evidence base surrounding each of the Review's objectives and will be used to inform the Review's recommendations for Government.

The Call for Evidence is gathering evidence on the Review's six objectives:

- to understand the prevalence and harmful impact of illegal pornography online, and the impact on viewers of other forms of legal pornography, including emerging themes like AI-generated pornography, and the impact on viewers' attitudes towards violence against women and girls;
- to assess the public's awareness and understanding of existing regulation and legislation of pornography;
- to consider the current rules in place to regulate the pornography industry, comparing online and offline laws;
- to determine if law enforcement and the justice system are responding to illegal pornography sufficiently, and if change is needed;
- to understand the prevalence of human trafficking and exploitation in the pornography industry;
- to use this knowledge to set out what more can be done to provide those who need it with guidance on the potential harmful impact of pornography.

[Read the Review's Terms of Reference in full here.](#)

Section 4.0 sets out the questions relating to each objective that the Review is gathering insights on.

Section 2.0 Regulatory and Legislative Regimes

Pornographic material is subject to several distinct regimes in terms of regulation and criminal offences, which span both offline and online environments — including physical video, media, broadcasting, video on demand, advertising, pornography websites and user-generated online content. These regimes set rules for what pornographic content can be distributed, hosted or shared, and what is considered legal and illegal — including giving the criminal justice system enforcement powers. These regimes fulfil different functions and provide protection for users and victims while ensuring freedom of speech.

Alongside these regimes are separate offences tackling exploitation and abuse. These are broader in their application than pornographic content but represent areas of concern in the pornography industry. These include a regime of serious criminal offences targeted at child sexual exploitation and abuse (CSEA), and laws targeting human trafficking, sexual exploitation and modern slavery.

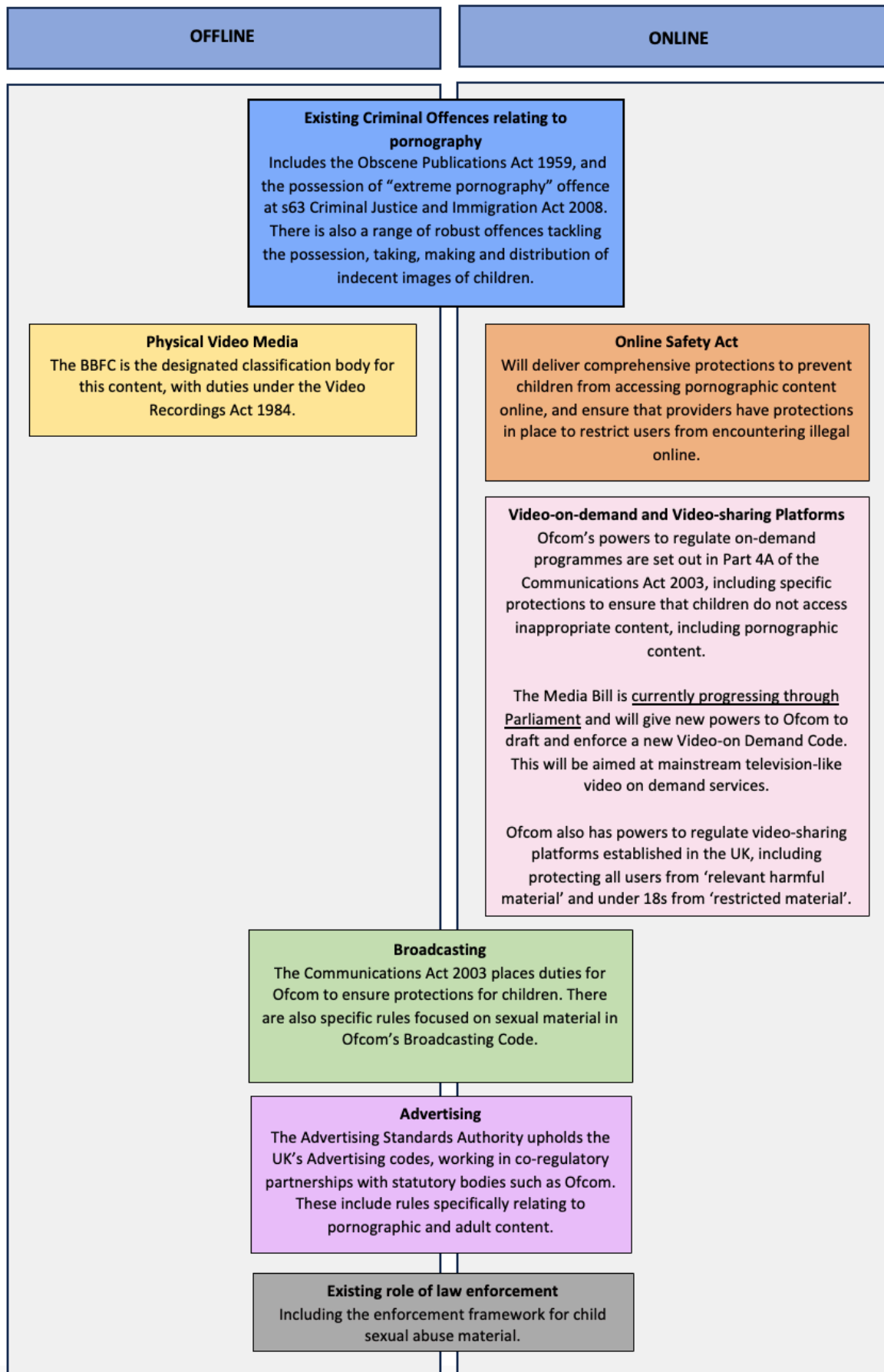


Figure 1: Overview of existing regulatory regimes for offline and online pornography.

Section 2.1: Regulatory Regimes

Commercial pornography: Physical Video Media

Pornography in physical video media format is regulated by two regimes — the Video Recordings Act (VRA) 1984 which is focused on the classification of the content itself, and the Licensing Act 2003 which regulates the exhibition of film.

The VRA 1984 sets out the requirements for video works (defined as any series of visual images with or without sound) in a physical format (VHS tapes, DVDs, cinema, etc.) to carry a content classification to be distributed or supplied in the UK. It is a criminal offence to supply video works for which no classification certificate has been issued. This carries up to two years imprisonment and/or a fine.

Under the VRA 1984, the British Board of Film Classification (BBFC) is the UK's designated body for the classification of physical media content in the UK. The VRA 1984 requires videos in physical formats such as DVDs and Blu-ray discs to be classified, either by the BBFC or a local authority, before they can be sold in the UK. Pornographic content usually receives the BBFC's 'R-18' rating. This classification is primarily for explicit works of consenting sex or strong fetish material involving adults. The R18 category is a legally restricted classification category which may only be shown to adults in specially licensed cinemas or supplied in licensed sex shops. R18 video works may not be supplied by mail order.

Box 1: BBFC classification 18 and R-18

The BBFC is the UK's designated body for the classification of physical media content in the UK. The BBFC's compliance officers review physical media, such as films, being released on DVD or in cinemas, to provide a recommended content classification.

Pornographic content would be expected to be classified under the BBFC's guidelines as either an 18 (if it portrays simulated sex) or a R-18 classification. According to the BBFC's guidelines, a R-18 classification would be expected to be given to physical media content that contains legal content that depicts clear images of real sex, strong fetish material, sexually explicit animated images, or other very strong sexual images.

- There are some forms of pornographic content which the BBFC might refuse to provide a classification for under their guidelines. These include:
- material (including dialogue) likely to encourage an interest in sexually abusive activity which may include adults role-playing as non-adults;
- the portrayal of sexual activity which involves real or apparent lack of consent. Any form of physical restraint which prevents participants from indicating a withdrawal of consent;
- the infliction of pain or acts which are likely to cause serious physical harm, whether real or (in a sexual context) simulated. Some allowance may be made for non-abusive, consensual activity;
- penetration by any object likely to cause physical harm;
- sexual threats, humiliation or abuse which do not form part of a clearly consenting role-playing game.³

In 2022, the BBFC did not refuse a classification to any R-18 pornographic films it reviewed. However, it did require cuts to 11% of the pornographic titles it assessed, to bring them in line with its guidelines for the R-18 classification. The cuts the BBFC required included removing depictions of throat-grabbing, choking, gagging and other breath restriction practices. It required cuts to remove verbal references that encouraged these practices. The BBFC also required some pornographic films to cut aspects of the film that could potentially encourage an interest in underage sexual activity.⁴

The Licensing Act 2003 establishes the scheme of licensing for the exhibition of films in England and Wales. Under the Licensing Act 2003, a licence is required from the local

³<https://darkroom.bbfc.co.uk/original/a2109fba273d7dff461f7c5c633ab3d:301f793713865776d4b4150fdc2f2971/bbfc-classification-guidelines.pdf>

⁴ BBFC annual report and accounts 2022:
<https://darkroom.bbfc.co.uk/original/8fc6ad19f2a9894316f1318bf3f8b16c:204cc3b92283292fdaca4efe9236f394/bbfc-annual-report-and-accounts-2022.pdf>

authority to exhibit a film to members of the public or a section of the public, and for members of a club and their guests. Carrying out unauthorised licensable activities is liable to imprisonment of up to six months and/or a fine. Section 20 of the Licensing Act 2003 outlines that part of the licence requires the exhibitor to restrict the admission of children into a screening, in line with the film classification it has received by the film classification body. In addition, Part II and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 outlines the process and remit for granting a license to a sex establishment (which includes sex cinema and sex shops).

Commercial Pornography: Broadcasting

Under the Communications Act 2003, Ofcom is required to create a standards code — the Broadcasting Code⁵ — for regulating broadcast television and radio content. Broadcasters must comply with this code, or they will face enforcement action.

The Communications Act 2003 sets out standards objectives for Ofcom to ensure protections for audiences. The legislation requires Ofcom to create a standards code (the Broadcasting Code) to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives. The Broadcasting Code sets enforceable rules that broadcasters must comply with to protect audiences.

These objectives include ensuring that persons under the age of 18 are protected, and to ensure adequate protection is provided for members of the public from the inclusion of offensive and harmful material.

Section One of the Broadcasting Code sets out rules that broadcasters must comply with to protect children, and includes specific rules focused on sexual material which includes pornographic content. This outlines that material equivalent to a BBFC age rating of R-18 must not be broadcast; that ‘adult sex material’ cannot be broadcast, other than on premium subscription services and pay per view/night services which operate with mandatory restricted access between 22:00 and 05:30; and that representations of sexual intercourse must not be broadcast before the watershed at 21:00.

Ofcom can open an investigation into a broadcast where they believe a breach of the Broadcasting Code has occurred and is able to take enforcement action if a channel is found to be in breach of rules set out in the Code.

Commercial Pornography: Video-on-demand

The Communications Act 2003 requires providers of regulated video-on-demand services to protect users from harmful material and children from specially restricted material, which includes pornography and material that might impair their physical, moral or mental development. Ofcom is the independent regulator for on-demand programme services.

⁵ <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

Box 2: Definition of Video-on-Demand Services

The legislative term for a video-on-demand service is an 'on-demand programme service'. The meaning of an 'on-demand programme service' is set out in the Communications Act 2003 at section 368A. A service must meet several criteria in order to be defined as an 'on-demand programme service', including:

- its principal purpose is the provision of programmes;
- access to it is on-demand;
- there is a person who has editorial responsibility for it;
- it is made available by that person for use by members of the public;
- that person's head office is in the United Kingdom; and
- editorial decisions about the service are taken in the United Kingdom.

The Communications Act 2003 sets out statutory rules for on-demand services, including that providers must take appropriate measures to ensure that 'specially restricted material' is made available in a way that ensures under-18s will not normally see or hear it.

'Specially restricted material' is defined in the legislation to include R-18 rated material, or material whose nature it is reasonable to expect that if it were to be submitted for classification, would be issued an R-18 certificate by the video works authority. 'Specially restricted material' also includes other material that might impair the physical, mental, or moral development of under-18s.

Ofcom guidance⁶ notes that, in assessing material that may impair the physical, mental or moral development of under-18s, providers should consider whether material is age appropriate for its users. The guidance makes clear that measures implemented by On-demand programme service (ODPS) providers to ensure that under 18s will not normally see or hear specially restricted material must be proportionate to the potential of the material to harm the physical, mental or moral development of under-18s. Ofcom's interpretation of this requirement means that providers should have robust age verification measures in place that prevent under-18s from accessing pornographic content. Ofcom also provides a non-exhaustive list of other material that might impair the physical, mental or moral development of under-18s, including sexual material; violence; depictions of dangerous behaviour; material portraying eating disorders, self-harm or suicide; abusive and offensive language; and exorcism, the occult or the paranormal.

As is the case for broadcasting, Ofcom can open an investigation into an on-demand programme service where they believe that a provider may have breached its statutory

⁶ Ofcom (2021) https://www.ofcom.org.uk/data/assets/pdf_file/0014/226301/statement-vsp-harms-guidance.pdf

obligations. Ofcom can take enforcement action if a service is found to be in breach of the rules.

Video-on-demand services are not currently regulated in the UK to the same extent as broadcast television. Specific rules are set out directly in legislation for on-demand programme services, while for broadcasting regulation, Ofcom has a duty to create a Broadcasting Code to achieve the overarching standards objectives set out in the legislation.

The Media Bill, introduced in Parliament in November 2023, aims to give new powers to Ofcom to draft and enforce a Video-on-demand Code, which will apply in addition to the existing on-demand rules to a subset of larger, TV-like on-demand programme services. The specific services that will be subject to enhanced regulation will be determined by the Secretary of State following a review by Ofcom. The objectives to be secured in the new Video-on-demand Code will be based on similar objectives to the Broadcasting Code, including on protections for under-18s and the inclusion of harmful material. These new powers will therefore give Ofcom broader duties and more flexibility to ensure protections for audiences of these larger on video-on-demand services are more closely aligned to those currently in place for broadcasting.

Commercial Pornography: Advertising

The Committees for Advertising Practice, the Advertising Standards Authority (ASA) and Ofcom set and enforce rules on where pornographic content can be advertised and what such adverts can contain.

Through the Communications Act 2003, Ofcom has statutory responsibility for the regulation of broadcast advertising. It contracts this responsibility to the ASA, a power which is enabled by the Contracting Out (Functions relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004. The Committees for Advertising Practice set advertising codes and their sister organisation, the ASA, manages their day-to-day enforcement codes, while Ofcom oversees any major changes.

The Communications Act 2003 contains standards that broadcast regulation must meet, which include requirements for advertising. These are set in the advertising code which oversees broadcast advertising, the UK Code of Broadcast Advertising (BCAP Code). Non-broadcast advertising is regulated according to the Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code).

The BCAP Code contains restrictions and requirements specific to pornographic content. There are a number of pornographic and pornographic-adjacent categories for which advertising is prohibited, as well as rules about how Premium Rate Telephone Services are presented to viewers, regarding transparency of pricing and nature of service. There are also requirements for Telecommunication-based Sexual Entertainment Services advertising, which, as a 'participation TV (PTV) service', Ofcom retains responsibility for. In this case, the relevant rules in the BCAP Code are enforced by Ofcom, rather than the ASA.

The CAP Code contains no sections which relate directly to the advertising of pornographic content. There are instead more general rules which can guide adjudication of complaints about adult content in advertising. These focus on whether an advert is likely to cause “serious or widespread harm”, and the code references areas which could be relevant to pornographic content: sexualisation of under 18s, gender stereotypes, and protected characteristics. The code states that “compliance will be judged on the context, medium, audience, product and prevailing standards”; this means the ASA takes a holistic view of factors in an advert’s distribution when making a decision.

The ASA enforces the CAP and BCAP codes through a complaints system. Organisations or members of the public can register a complaint which the ASA Council will review, and either uphold or dismiss. If a complaint is upheld, the advert must be withdrawn or altered so it complies with the codes. In cases of persistent non-compliance, the ASA can refer an advertiser to Trading Standards or Ofcom, which have powers to enforce further sanctions.

Online User-generated Content and Children’s Access to Online Pornography: The Online Safety Act 2023

Children’s online access to pornographic content on pornography services and services that host user-generated-content, such as social media services, will be regulated by Ofcom under the Online Safety Act 2023 (OSA). The Act gained Royal Assent on 26 October 2023. The legislation will cover all online services with pornographic content, including commercial pornography sites, social media, and forums, as well as search engines. The duties in the Online Safety Act that relate to legal pornographic content are concerned with restricting children’s access to it.

Box 3 - Definition of User-to-User Service in the Online Safety Act 2023

The OSA defines a user-to-user service as “an internet service by means of which content that is generated directly on the service by a user of the service or uploaded to or shared on the service by a user of the service, may be encountered by another user, or other users, of the service”.

This is a broad definition and captures any service that allows users to share content (including but not limited to: text, icons, video, images, and audio) online or interact with each other. Services such as social media services, online forums, and private messaging apps are captured by this definition. If a service has a functionality that allows that content to be shared, it would be captured under this definition and be subject to the relevant duties under the OSA.

Under the OSA, user-to-user services (such as social media platforms) which are likely to be accessed by children will need complete a children’s risk assessment to establish the risk of harm presented to children by their service. They will need put in place proportionate measures to mitigate the impact of harm to children presented by harmful content, including pornography, and put in place proportionate systems and processes to prevent children of all

ages from encountering pornographic content on their service. There are strong age assurance requirements for regulated user-to-user services in relation to pornography content on their service. These services are required to use highly effective age verification or age estimation, or both, to ensure children are prevented from encountering pornographic content on their service.

Ofcom will produce codes of practice that set out the way in which providers can comply with this duty, and what age assurance technologies it recommends providers use. Services can follow the measures sets out in these codes of practice or use alternative measures, provided they comply with the safety duties and have regard to users' rights to freedom of expression and privacy.

Box 4 - Functionality and Popularity of the Top 200 Pornographic Sites

To assist assessing what proportion of sites are likely to fall within scope of the OSA, in 2019 and 2021 the Government commissioned the BBFC to conduct research on the functionality and traffic of pornography sites accessed from the UK.

This research found that the top 200 exclusively adult sites received 76.05% of the total UK traffic to adult sites. Of these, the first site received 56.63% of unique visitors (15,367,483 people).⁷

Findings showed that 64% of the top 200 adult sites had one or more functionality that allows users to upload and share their own content, livestream or interact with other users via comments or live chat.⁸ Of the reviewed sites, 4.5% have existing mechanisms in place that may prevent, deter or delay children accessing the site before displaying any pornographic content. These include the requirement to sign up for an account and register payment details before displaying any pornographic content. Whereas 14.5% of sites have a 'pop-up' warning that the content is intended for adults only.⁹

36% of reviewed sites contain none of the above functionality. These include 'gallery' sites, which generally use automated crawlers to gather content from other platforms.¹⁰

Search services are also covered by the OSA. Search services that children are likely to access will be required to conduct a child safety risk assessment and take proportionate steps to minimise the risk of children of all ages from encountering pornographic content. Again, Ofcom will set out in codes of practice the steps companies can take to fulfil their duties.

The OSA will also place requirements on all regulated user-to-user services to tackle illegal pornographic content and CSEA content. CSEA and extreme pornography offences are listed

⁷ BBFC (11 January 2021) [BBFC Research Report Commissioned by the DCMS: Further Research on Traffic to and Functionality of Adult Sites](#)

⁸ BBFC (19 October 2020) [BBFC Assessment of Adult Sites' Functionality: A Research Report Commissioned by DCMS](#)

⁹ BBFC (19 October 2020) [BBFC Assessment of Adult Sites' Functionality: A Research Report Commissioned by DCMS](#)

¹⁰ BBFC (19 October 2020) [BBFC Assessment of Adult Sites' Functionality: A Research Report Commissioned by DCMS](#)

as priority offences in the OSA. This means that all regulated user-to-user services in scope of the illegal content duties will be required to use proportionate systems and processes to tackle this type of content. They will be required to use proportionate measures relating to the design and operation of the service to prevent users from encountering CSEA and extreme pornography content and must remove this type of content swiftly if it does appear once they become aware of it.

Pornography sites that themselves publish or display pornographic content are treated differently under the Act. These sites will be required to use highly effective age verification or age estimation solutions to prevent children from accessing pornographic content on their service. If a pornography site publishes both its own pornographic content and hosts user-generated-content, for example it allows users to upload their own content, it will be required to put in place the duties set out in the OSA for both user-to-user and published pornographic content.

Online User-generated Content and Children’s Access to Online Pornography: Video-sharing platforms

Ofcom is the regulator for video-sharing platforms (VSPs) established in the UK, as set out in Part 4B of the Communications Act 2003. VSPs are a type of online video service which allow users to upload and share videos with the public and where the platform does not play an editorial role. Since November 2020, video-sharing platform providers in UK jurisdiction are legally obliged to notify their platform to Ofcom. As of December 2023, there were 22 platforms that notified Ofcom, some of which are adult VSPs. Many video-sharing platforms are not in scope in the UK because they do not meet the jurisdictional criteria.

UK-established VSPs must comply with rules around protecting all users from ‘relevant harmful material’ and under 18s from ‘restricted material.’ The definitions for this material are the same as video-on-demand services, as per section 368E of the Communications Act 2003,¹¹ meaning that VSPs must protect under-18s from videos containing R18 or unclassified material, and other material that might impair their physical, mental, or moral development. It is important to note that the responsibilities placed on providers to ensure their users are appropriately protected differ for video-on-demand and video-sharing platform services due to the difference in functionality, with VSP services allowing for videos to be uploaded by their users.

Guidance from Ofcom¹² sets out measures for providers to take including access control measures such as age assurance and parental controls. Ofcom states that platforms ‘should determine whether it is appropriate to take a particular measure, according to whether it is practicable and proportionate to do so, considering factors including the size and nature of the platform; the type of material on the platform and the harm it might cause; and the rights and legitimate interests of users. Measures must be implemented in a way that protects users from harmful material.’ The Guidance goes on to note that ‘for material that might impair the

¹¹ <https://www.legislation.gov.uk/ukpga/2003/21/section/368E>

¹² Video-sharing platform guidance: Guidance for providers on measures to protect users from harmful material, Ofcom, October 2021 https://www.ofcom.org.uk/data/assets/pdf_file/0015/226302/vsp-harms-guidance.pdf

physical, mental or moral development of under-18s, the VSP Framework requires the principle to be applied that material that has the most potential to harm must be subject to the strictest access control measures.’

Ofcom currently has an open enforcement programme into age assurance measures on UK-established, adult VSPs, looking at whether UK-established VSP that specialise in adult content have appropriate age assurance measures in place.¹³

The Online Safety Act 2023 will repeal the VSP platform regime following a transitional period, and services will be regulated under the online safety regime.¹⁴

¹³ Ofcom enforcement bulletin, December 2023 https://www.ofcom.org.uk/about-ofcom/bulletins/enforcement-bulletin/open-cases/cw_01266

¹⁴ Repeal of the VSP regime: what you need to know, Ofcom, May 2023 <https://www.ofcom.org.uk/online-safety/information-for-industry/vsp-regulation/repeal-of-the-vsp-regime>

Section 2.2: Criminal Offences

There are several criminal offences which can be committed which are relevant to pornographic content and the pornography industry, which apply equally online and offline.

Illegal Pornographic Content

There are existing offences which cover the publication and possession of certain types of pornographic material. For example, the Obscene Publications Act 1959 (OPA) and section 63 of the Criminal Justice and Immigration Act 2008.

The OPA creates an offence of publishing “obscene” articles. The Act includes a general test of “obscenity” to support law enforcement and the criminal justice system in assessing whether material meets the threshold. This test states that content should be considered “obscene” if it has the tendency to deprave or corrupt those likely to read, see or hear the material. However, this is not an exhaustive definition and provides flexibility for the criminal justice system to reflect society’s changing attitudes towards pornographic content. The offence applies equally to material published online, broadcast, or published in physical forms and carries a maximum penalty of five years imprisonment.

The offence at Section 63 of the Criminal Justice and Immigration Act 2008 criminalises the possession of “extreme” pornographic images and targets pornographic material which is already an offence to publish or distribute under the OPA. For material to be in scope it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal, and be grossly offensive, disgusting or otherwise obscene. The legislation further describes types of images are captured by the offence. These include images explicitly and realistically depicting acts which threaten a person’s life; acts which result or are likely to result in serious injury to a person’s anus, breasts, or genitals; necrophilia; and bestiality, where a reasonable person looking at the images would think that the person or animal was real; and images of non-consensual penetrative sexual activity.

The offence applies equally to material published online, broadcast, or published in physical forms and carries a maximum penalty of two years imprisonment. Internet services are exempt from this offence if they are found to host this content but are not aware of it and have not themselves published or distributed it (e.g. promoted or shared it).

Exploitation and Abuse: Intimate Image Abuse

There is a range of offences which target the non-consensual sharing of intimate images. These are not targeted at “pornography” specifically but can be applied where an individual’s intimate image or video is published or shared on a pornography site without their consent, for example, the offence of “disclosing private sexual photographs and films with intent to cause distress” at Section 33 of the Criminal Justice and Courts Act 2015 (often referred to as the “revenge porn” offence).

Section 33 of the Criminal Justice and Courts Act 2015 targets image-based sexual abuse. The so-called “revenge pornography” offence targets the sharing of, or threat to share, private sexual photographs and films of someone either on or offline without their consent, to cause the person depicted distress.

To strengthen image-based sexual abuse offences, the OSA has created four new offences targeting sharing or threatening to share intimate images¹⁵. When the offences are commenced, these will include:

- a ‘base’ offence of sharing an intimate photograph or film without consent or reasonable belief in consent. The maximum penalty is 6 months imprisonment.
- an offence of sharing an intimate photograph or film without consent, with intent to cause alarm, distress or humiliation. The maximum penalty is 2 years imprisonment.
- an offence of sharing an intimate image without consent or a reasonable belief in consent, for the purpose of obtaining sexual gratification (the maximum penalty is 2 years imprisonment); offenders may also be subject to notification requirements, commonly referred to as being on the “sex offender’s register”.
- an offence of threatening to share an intimate image. The maximum penalty is 2 years imprisonment.

These new sharing offences apply to manufactured or altered images (including “deepfakes”) for the first time. They also broaden the interpretation of “intimate” to include images that show or appear to show a person who is nude or partially nude or which depict sexual or toileting behaviour.

Box 5 - AI generated Pornography

There is a growing volume of AI generated pornography available online, with some providers offering AI-generated pornography services. For those that allow 'generative AI' on their service, it is made available through services such as prompt-based image, video, and audio generators, and chatbots. AI-generated pornographic content can depict entirely fictional people, real people depicted consensually, and real people depicted non-consensually. The latter might include adult performers whose content has been ‘scraped’ for use in the AI model without their consent, and individuals who are deliberately targeted by the user but have not given consent for their image to be used in this way.

Generative AI generally refers to AI models that can create new content such as images, videos or text, in response to a ‘prompt’ from a user - usually a text description. These services are usually ‘trained’ on a variety of data sources, including online content and other media.

¹⁵ The Online Safety Act 2023 repeals the Criminal Justice and Courts Act 2015 offence which criminalises the disclosure of private, sexual photographs and films of an individual without their consent, with intent to cause that individual distress, and replaces it with these four new offences.

Where generative AI services meet the definition of a user-to-user service (box 3) or search service under the Online Safety Act (OSA) it would be in scope of the Act's duties to tackle illegal material and put in place measures to prevent children from seeing legal pornographic content. If they publish pornographic content as defined in Part 5 of the OSA¹⁶ they would be required to put in place highly effective age verification or age estimation measures to prevent children from seeing legal pornographic content.

Box 6 - Augmented and Virtual Reality

The use of immersive technologies, such as augmented reality and virtual reality, have become increasingly popular in recent years. Virtual reality (VR) is a computer-generated 3D environment, where users can wear a VR headset to experience the sights and sounds of a simulated scenario.¹⁷ Augmented reality blends the physical world with digital content through smartphones and wearable devices, with examples including face filters for social media apps, such as Snapchat, and location-based games such as Pokémon GO.¹⁸

There is growing concern about virtual reality pornography, which allows the user to view pornography through the eyes of one of the participants, in particular if a child is exposed to VR porn which simulates sexual acts with adult performers through the platform.¹⁹

Exploitation and Abuse: Child Sexual Exploitation and Abuse

Child sexual exploitation and abuse (CSEA) material is not pornography however, reporting by organisations such as the Internet Watch Foundation²⁰ indicate that this content can be found on pornography sites. There is a regime of serious criminal offences tackling the possession, taking, making and distribution of indecent images of children which apply equally offline and online.

The Protection of Children Act 1978 creates an absolute prohibition on the taking, making, distribution, publication, showing and possession with a view to distribution of any indecent

¹⁶ The Act defines 'provider pornographic content', in relation to an internet service, as pornographic content that is published or displayed on the service by the provider of the service or by a person acting on behalf of the provider, including pornography content published or displayed on the services by means of (a) software or an automated tool or algorithm applied by the provider by a person acting on behalf of the provider, or (b) an automated tool or algorithm made available on the service by the provider or by a person acting on behalf of the provider. Online Safety Act (2023). <https://www.legislation.gov.uk/ukpga/2023/50/enacted#section-79-4>

¹⁷ Child Safeguarding and Immersive Technologies: Key Concepts (2023) <https://learning.nspcc.org.uk/media/3333/child-safeguarding-immersive-technologies-key-concepts.pdf>

¹⁸ Child Safeguarding and Immersive Technologies: Key Concepts (2023) <https://learning.nspcc.org.uk/media/3333/child-safeguarding-immersive-technologies-key-concepts.pdf>

¹⁹ Child Safeguarding Immersive Technologies: An Outline of the Risks (2023) <https://learning.nspcc.org.uk/media/3341/child-safeguarding-immersive-technologies.pdf>

²⁰ <https://www.iwf.org.uk/about-us/who-we-are/annual-report-2022/>

photograph (or pseudo-photograph²¹) of a child under 18. The term 'indecent' is not defined in the Act. The courts decide in each case whether the material in question is indecent or not. These offences carry a maximum sentence of 10 years' imprisonment.

Section 160 of the Criminal Justice Act 1988 makes the simple possession of indecent photographs (or pseudo-photographs) of children an offence and carries a maximum sentence of five years imprisonment.

Section 62 of the Coroners and Justice Act 2009 creates an offence to possess "prohibited images of children". Described broadly these are of non-photographic visual depictions of child sexual abuse for example, 'Hentai' cartoons and computer-generated images of child sexual abuse. This offence carries a three-year maximum prison sentence.

Exploitation and Abuse: Modern Slavery and Human Trafficking

The links between modern slavery, human trafficking and the pornography industry are not well understood but are an area of growing concern. There are several offences designed to tackle human trafficking and modern slavery that are particularly relevant to the pornography industry.

Under the Modern Slavery Act 2015 (section 2) a human trafficking offence is if a person arranges or facilitates the travel of another person with a view to that person being exploited. Exploitation is defined as covering sexual exploitation. Specifically, where this involves the commission of an offence under the Protection of Children Act 1978 (indecent photographs of children), or an offence under (ii) Part 1 of the Sexual Offences Act 2003 which includes standalone offences of, causing, inciting or controlling prostitution for gain and paying for the services of a prostitute subjected to force.

The Sexual Offences Act 2003 contains a range of offences to deal with sexual exploitation and sexual abuse in all its forms. These include non-consensual sexual offences, sexual exploitation offences, sexual offences against children, and arranging or facilitating commission of a child sex offence.

²¹ A pseudo-photograph is defined in the 1978 Act as "an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph"

Section 3.0: Information Resources on Pornography Use

Information Resources on Pornography Use for Children

Secondary schools in England are required to cover pornography, in an age-appropriate way, as part of their statutory requirement to teach relationships and sex education. These have been compulsory subjects for secondary schools since 2020, following the publication of statutory guidance on relationships, sex and health education (RSHE) in 2019.

The statutory RSHE guidance states that by the end of their secondary education pupils should know that:

- specifically, sexually explicit material e.g. pornography, presents a distorted picture of sexual behaviours, can damage the way people see themselves in relation to others, and negatively affect how they behave towards sexual partners; and
- sharing and viewing indecent images of children (including those created by children) is a criminal offence which carries severe penalties including jail.

The statutory RSHE guidance is currently under its review by the Government. As part of this review, the Government is considering the appropriate ages for sensitive subjects, such as pornography, to be addressed with pupils within RSHE.

Information Resources on Pornography Use for All Ages

There are limited government-issued information resources on the impact of 'problematic pornography use', such as a compulsive or need to view pornography or excessive viewing of pornography. The mental health impact of viewing pornography is not well understood. Currently, the NHS' online information pages on pornography use directs individuals to civil society organisations for further information and support.

Section 4.0 - Call for Evidence

Call for Evidence Questions

The Prevalence of Illegal Pornography Online, and the Impact of Legal Online Pornography

The Review is setting out to understand whether the existing regulatory and legislative regimes relating to online pornographic content are working effectively. In assessing this, it is important to understand what kinds of pornographic content are prevalent online, including whether illegal pornographic content is easily accessible, and the impact online pornographic content might have on viewers, including on mental health, sexual relationships, and views towards romantic and/or sexual partners.

As technology develops, regulation and legislation must adapt to ensure users' safety and rights continue to be upheld. The pornography industry has been significantly impacted by the emergence of new technologies. Many individuals now access pornography online and in formats such as live-streamed content. As new technologies such as AI and augmented/virtual realities continue to innovate and grow in popularity, it is expected that they will have an increasing impact on how pornography is made and accessed (see box 5 and box 6). However, the prevalence of pornographic content created or accessed through these new technologies and their impact is not well understood.

The Review is interested in improving the evidence base on the prevalence of certain types of online pornographic content and the impact pornography is having on individuals. It is also interested in how pornography created or accessed via new technologies such as AI is impacting on individuals.

- 1. What evidence can you provide on the public's attitudes towards pornography? This can include positive or negative attitudes from individuals of any age.**
- 2. What evidence can you provide on how legal pornography positively affects the behaviours of viewers? This can include relationships, psychological impacts and/or sexual behaviours of viewers.**
- 3. What evidence can you provide on how legal pornography adversely affects the behaviours of viewers? This can include relationships, psychological impacts and/or sexual behaviours of viewers.**
- 4. Is there evidence to suggest a link between viewing specific types of legal pornography (such as violent legal pornography) and subsequent attitudes towards relationships, psychological impacts and/or sexual behaviours of viewers?**

5. **Is there evidence to suggest links between viewing specific types of pornography and viewers' attitudes towards violence against women and girls?**
6. **What evidence can you provide to show the prevalence of users who view legal pornography, and then go on to view illegal pornography or child sexual exploitation and abuse material (either deliberately or inadvertently)? Please make clear whether evidence included refers to material watched deliberately or inadvertently.**
7. **What evidence can you provide on the proportion of UK citizens that have intentionally or unintentionally viewed illegal pornography online? Please make clear whether evidence included refers to intentional or unintentional viewing.**
8. **What evidence can you provide on the prevalence of child sexual abuse and exploitation content appearing on pornography sites?**
9. **What evidence can you provide on how illegal pornography affects the behaviours of viewers? This can include relationships, psychological impacts and/or sexual behaviours of viewers.**
10. **The Review is seeking to understand what might lead a person to view illegal pornography or child sexual exploitation and abuse material.**

What evidence can you provide of legal pornography viewing habits that might lead a person to deliberately view:

10.1 illegal pornography; or

10.2 child sexual exploitation and abuse material?

11. What evidence can you provide of legal pornography viewing habits that might lead a person to inadvertently view:

11.1 illegal pornography; or

11.2 child sexual exploitation and abuse material?

12. What evidence can you provide on the prevalence of pornography appearing in augmented or virtual reality environments?

13. What evidence can you provide on the prevalence of AI-generated pornography?

14. What evidence can you provide on the positive or negative impacts of AI-generated pornography on viewers? This can include the impact on relationships, psychological impacts and/or sexual behaviours.

15. What evidence can you provide on the impacts of AI-generated pornography on performers of pornography, where they have consented to their image/ likeness/ voice being used?

- 16. What evidence can you provide on the impacts of AI-generated pornography, where the subject has not necessarily consented to their image/ likeness/ voice being used?**
- 17. Does AI-generated pornography present a different type of harm, compared to non-AI-generated pornography? The harm can refer to both the viewer as well as societal attitudes towards sex and relationships. Please provide any evidence to support this.**
- 18. What evidence can you provide on the positive and/ or negative impacts of augmented reality or virtual reality-generated pornography on viewers? This can include the impact on relationships, mental health and/or sexual behaviours.**
- 19. What impact has pornography's shift to online mediums had on viewers? This could include impacts on accessibility, attitudes, violence against women and girls etc. Please provide evidence to support this.**
- 20. Are performers appearing in pornographic content receiving adequate protections from harm in the industry? Please provide any evidence to support this.**

Comparing the Regulation of Pornographic Content accessed via physical media, broadcast or video-on-demand, against the regulation of Online Pornographic Content accessed via Commercial Pornography Websites and User-to-user Sites

There are several regulatory regimes that apply to pornographic content across the online and offline space (see section 2.1), with differences in how or whether they seek to classify content and the provisions and access constraints they place on content. It is important that the regulation of pornographic content reflects the different ways the online and offline spaces work and how users are commonly accessing this content. It is also important that regulation provides users and industry with clarity and reassurance. The Review is interested in understanding whether the regulatory regimes that exist for pornographic content are effective for the spaces in which they operate and whether consistency between them is desirable.

21. What evidence can you provide on the number of people watching pornography:

21.1 online (via a dedicated pornography website or social media); or

21.2 offline (via physical medium such as DVD)?

22. Please provide any evidence that shows there are different impacts on viewers who view pornographic content on social media and/or dedicated pornography websites, compared to viewing pornography on a physical medium (such as physical pornography videos)?

23. What evidence can you provide on the effectiveness of the existing regulatory regimes for pornographic content (illegal and legal- see section 2.1)? This can include online content, video-on-demand, broadcasting, advertising, and physical media.

24. Are there likely to be any unintended consequences of further regulatory alignment? Please provide any evidence you have to support this.

25. Considering pornography's regulatory landscape, including the not yet fully in-force regulations on user-to-user platforms and pornography publishers through the Online Safety Act 2023 (see section 2.1, paragraph 30), do you think there are:

25.1 any gaps in the regulation of online pornography? Please provide evidence and detail any reasoning; or

25.2 any gaps in regulation of offline pornography? Please provide evidence and detail any reasoning.

The Response to Illegal Pornographic Content and Exploitation and Abuse in the Pornography Industry

The Review is seeking to understand whether the criminal justice system has the tools and resources it needs to effectively enforce the framework of offences relating to online illegal material and behaviour associated with the pornography industry (see section 2.2). It is important that users and victims are adequately protected and have confidence in the criminal justice system response. The nature of the internet, including the scale and volume of online content and the development of new technologies poses unique challenges for enforcement but also potential opportunities. There is concern that illegal content, including illegal pornographic content and child sexual exploitation and abuse material, is easily accessible on pornography sites.²² There is also growing concern over the relationship between modern slavery, human trafficking, and the pornography industry, though the links are relatively unknown and there is currently no existing national law enforcement or prevention activity for modern slavery/ human trafficking directed towards the industry.

The Review is interested in understanding the scale of the problem and the challenges facing the criminal justice system (which includes law enforcement) in identifying and tackling illegal online content, exploitation and abuse in the pornography industry, and what can be done to overcome these. It is also interested in establishing what efforts can be made by the pornography industry to tackle these issues more effectively.

26. What evidence can you provide on the effectiveness of the criminal justice system response to tackling illegal pornographic content throughout the stages of law enforcement, prosecution and the courts system?

27. In your view, how can the criminal justice system's response to tackling illegal pornographic content be strengthened?

28. In your view, how is the current response by the criminal justice system impacting individuals' decisions to report on:

28.1 illegal pornography;

28.2 modern slavery/human trafficking in pornography; or

28.3 child sexual abuse and exploitation content that appears on pornography sites?

29. What evidence can you provide on efforts made by the pornography industry to tackle and combat the following appearing on their services:

29.1 illegal pornographic content; or

²² Internet Watch Foundation (2022) <https://www.iwf.org.uk/news-media/news/more-than-one-in-10-british-young-people-exposed-to-online-child-sexual-abuse/>

29.2 child sexual abuse and exploitation material?

30. What evidence can you provide on the prevalence of modern slavery/human trafficking in the pornography industry?

31. What evidence can you provide on the efforts made by the pornography industry to track and counter instances of modern slavery/human trafficking?

32. How has the increase in online pornography and ease of access, positively and/or negatively impacted adult performers? Please provide evidence to support this.

33. What evidence can you provide on the effectiveness of specific measures, in diverting viewers from accessing illegal pornographic content online? For example, nudge tactics (design features which encourage, or 'nudge', users to make a different decision)

Education and Information Resources on Pornography

It is important that children, their parents and carers, and adults have the information and support they need to identify illegal pornography content and to understand the potential impact that pornography use may have on themselves and others. As detailed in Section 3.0 there is currently a statutory requirement on secondary schools in England to teach relationships and sex education, and the curriculum for secondary includes the potential harmful impact of pornography and help pupils identify child sexual exploitation and abuse content.

There are currently no government policies targeted at providing parents and carers with information resources to help them talk to their children about pornography, and currently no policies aimed at providing adults with information resources about their pornography use and potential impacts.

The Review is interested in understanding what education or information resources are currently available to both adults and children on pornography and what more might be done in this area to ensure individuals are equipped with the information they need to better understand the potential impacts of pornography.

34. What education / information are you aware of being available for adults about:

34.1 the potential impact of viewing pornography? This can include some types of legal pornography which convey violent or misogynistic assumptions about sex and relationships.

34.1.1 In your view, how effective is this education / information?

34.2 what constitutes illegal pornography?

34.2.1 In your view, how effective is this education / information?

35. What education / information are you aware of being available for children about:

35.1 the impact of viewing pornography? This can include some types of legal pornography which conveys violent or misogynistic assumptions about sex and relationships.

35.1.1 In your view, how effective is this education / information?

35.2 what constitutes illegal pornography?

35.2.1 In your view, how effective is this education / information?

36. What evidence can you provide on what motivates children, parents and carers to seek information about pornography and its harmful impacts?

37. In your view, how could parents / carers be better supported to educate their children about pornography? Please provide any evidence you have to support this.

38. In your view, what information or support would be helpful for adults who are concerned about their own consumption of pornography? Please provide any evidence you have to support this.

39. Please include any further evidence or views you feel has not been captured in the above questions.

Next steps

This Call for Evidence will be open for a period of 8 weeks, closing 7 March 2024. Submitted evidence will then be analysed to guide the recommendations from the Independent Lead Reviewer, which will be included in the final report at the Review's conclusion.

This consultation is available from: www.gov.uk/government/organisations/department-for-science-innovation-and-technology

If you need a version of this document in a more accessible format, please email alt.formats@dsit.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.