

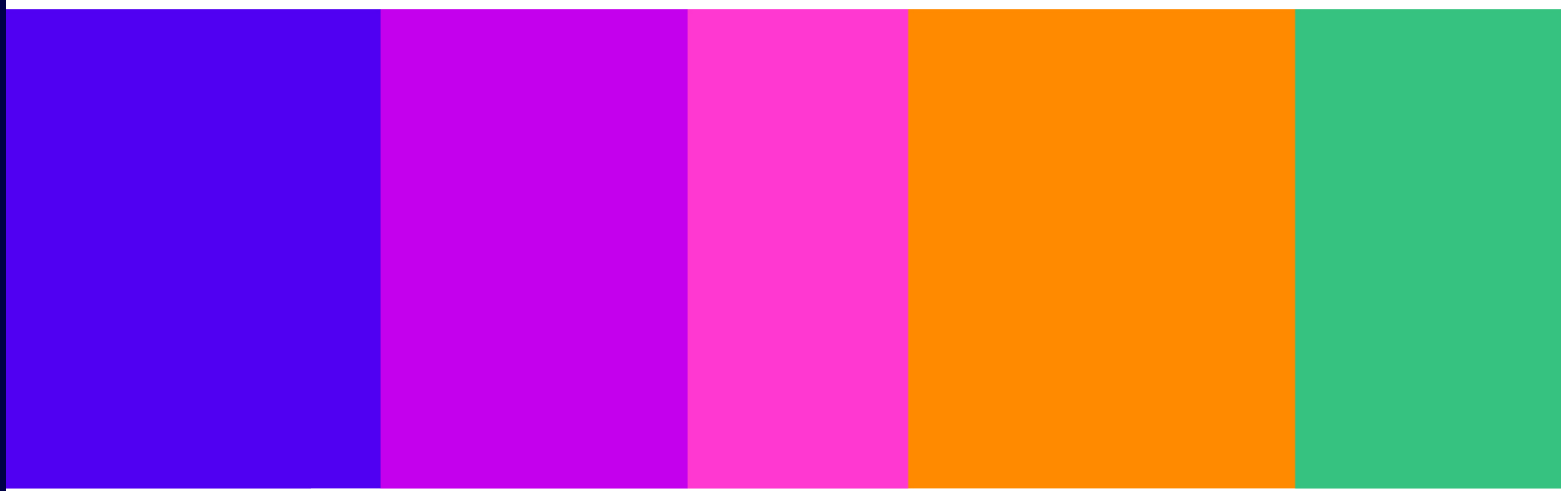
Illegal harms further consultation

Torture and animal cruelty

Consultation

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1. Overview

Context

- 1.1 The Online Safety Act makes providers of online services legally responsible for keeping people safe when they're online. They have new duties to protect people in the UK by assessing risks of harm and taking steps to address them. As the UK's online safety regulator, Ofcom's role is to provide codes and guidance to support regulated services to comply with their duties and deliver a safer life online for people in the UK.
- 1.2 Our [November 2023 Illegal Harms Consultation](#) ("November 2023 Consultation") was the first step in putting the new online safety regulation into effect. In that document we consulted on a number of regulatory documents, which will form the first key steps in the online safety regulatory regime. These are:¹
- **Ofcom Risk Assessment:** To improve Ofcom's and service providers' understanding of risk, we are required to conduct our own risk assessment. We consulted on our 'Register of Risks', which sets out our assessment of where and how illegal harms manifest online and the factors that give rise to risks of harm.
 - **Service Risk Assessment Guidance:** All providers must make sure their risk assessments are "suitable and sufficient", and they must take appropriate steps to keep them up to date. Our proposed guidance lays out the steps they can take to make sure their risk assessments meet the requirements that have been set out. We also consulted on a set of '**Risk Profiles**' which summarise the factors we associate with an increased risk of illegal harms. These Risk Profiles are set out in the Service Risk Assessment Guidance and draw on the analysis set out in our Register of Risks and serve to summarise the main findings of the Register.
 - **Record Keeping and Review Guidance:** This helps providers to record their risk assessments and the measures they take to make sure they comply with their safety duties.
 - **Codes of Practice:** These set out measures that providers can take to mitigate the risk of illegal harm. They will help providers to take or use proportionate measures, systems and processes to manage the risks of illegal content. While the final Codes will not be binding, services that comply with them will be deemed compliant with their safety duties.
 - **Illegal Content Judgements Guidance (ICJG):** Providers need to know what illegal content is in order to carry out their duties, including carrying out risk assessments and taking down illegal content when they become aware of it. This guidance will help providers assess whether content is illegal.
 - **Enforcement Guidance:** This sets out how we expect to exercise our new enforcement powers under the Act.

¹ In Annex 9 of our November 2023 Consultation, we also published some guidance on what we consider to be content communicated publicly or privately.

- 1.3 The Act lists over 130 ‘priority offences’. All providers will need to act to protect users from encountering content which amounts to one of these offences. Providers also have duties to swiftly take down certain types of other illegal content, when they become aware of it.
- 1.4 Providers need to assess and mitigate the risk of content which amounts to one of these offences, and our November 2023 Consultation sets out our proposals on how they should do this.
- 1.5 One of the priority offences in the Act is the animal cruelty offence², which was added at a fairly late stage to the Bill, which became the Act. Because of this late addition, we were not able to include it in our November 2023 Consultation. However, we noted that we intended to consult on including that offence in our proposals.
- 1.6 We consider that animal cruelty content³ can pose a significant risk to people who use online services. So, we are now consulting on adding this to the following documents we have already detailed above namely:
- Register of Risks;
 - Service Risk Assessment Guidance/Risk Profiles;
 - Codes of Practice; and
 - Illegal Content Judgements Guidance.
- 1.7 Under our proposals, these regulatory documents will make sure that providers are assessing the risks of animal cruelty content appearing on their services where required, putting in place measures to mitigate these risks, and taking the content down.
- 1.8 The Animal Welfare Act priority offence does not fully capture the online content associated with animal cruelty. A lot of animal cruelty content is likely to fall outside it. Also, the priority offences in the Online Safety Act do not fully capture obscene content depicting torture of humans. This creates a risk that providers looking at the priority offences might conclude that they did not need to remove this type of content. We have therefore identified other legal provisions which would require the removal of animal cruelty and human torture content. We have provisionally concluded that much of this content would violate the offence under section 127(1) of the Communications Act 2003. So, we are consulting on including this non-priority offence in our regulatory documents, to better protect users from these illegal harms (see Section 3 below for further detail). These additions are designed to make sure providers understand that they should remove illegal animal cruelty and human torture content when they encounter it even if it is not fully captured by the priority offences in the Act.
- 1.9 Some of the feedback we received on our November 2023 Consultation might also be relevant to the approach we are proposing in this consultation. We are developing our overall approach to illegal harms and our policy specifically on torture and animal cruelty in parallel. We will take into account relevant responses to our November 2023 Consultation, to our [May 2024 Protection of Children Consultation](#), and to this consultation, as we prepare our final decisions.

² The offence in section 4(1) of the Animal Welfare Act 2006 (unnecessary suffering of an animal).

³ This can include for example, content depicting cruelty to animals as well as content in which people conspire to commit animal cruelty, encourage animal cruelty or assist another in committing animal cruelty.

- 1.10 In relation to some points, we have already been able to take into account relevant responses to our November 2023 Consultation. However, we have not necessarily made judgements on all responses to that consultation. If you have already responded to the November 2023 Consultation and would like us to consider some or all of your response in relation to this consultation, please let us know.

Next steps

- 1.11 We welcome comments in response to the proposals set out in this document, including any further evidence and supporting information to inform our final decisions. The consultation closes on Friday 13 September 2024.
- 1.12 Once the consultation closes, we will consider the responses we have received, review our proposals, and publish a Statement setting out our final decisions in relation to the consultation proposals we set out in our November 2023 Consultation, the illegal harms changes we proposed in our Protection of Children Consultation and this consultation.
- 1.13 We currently plan to publish our Statement in December 2024. Following our Statement, providers will have three months to conduct their illegal content risk assessment. The Codes of Practice will also be subject to a Parliamentary approval process.

2. Introduction

- 2.1 This section provides a high-level introduction to this consultation. It sets out why it includes the offences it includes, and explains how to navigate this document.

The legal framework

- 2.2 A description of the legal framework relevant to illegal content online is available in [Annex 12](#) of the November 2023 Consultation. This explains the duties, under the Act, on online service providers to carry out illegal content risk assessments, their safety duty in relation to the risks, and the documents and guidance that Ofcom must produce to help them with this.
- 2.3 Under the Act, the duties on providers are more stringent for ‘priority offences’. ‘Priority offences’ are those listed in Schedules 5, 6 and 7 of the Act.
- 2.4 At a fairly late stage, the offence in section 4(1) of the Animal Welfare Act 2006 (unnecessary suffering of an animal) was added to Schedule 7 of the Act, to make it a priority offence. In this consultation, we refer to this offence as the ‘animal cruelty offence’. We did not have sufficient time to conduct the work needed to consult on this offence within our November 2023 Consultation but in that consultation, we said we would consult on it in due course. We are now doing so.
- 2.5 The Act also contains obligations on providers in relation to non-priority offences, although these are less stringent than for priority offences. We have considered particular types of non-priority offences separately where we consider it appropriate.

Torture and animal cruelty

- 2.6 We are consulting on including the animal cruelty offence in our Register of Risks, Risk Assessment Guidance, Illegal Content Codes of Practice, and Illegal Content Judgements Guidance (“ICJG”).
- 2.7 We are also consulting on including the offence in section 127(1) of the Communications Act 2003 in our Register of Risks and ICJG. Section 127(1) of the Communications Act is a non-priority offence under the Act, which covers sending, or causing to be sent by means of a public electronic communications network, a message or other matter that is grossly offensive or of an indecent, obscene or menacing character. This is because we consider that some important aspects of animal cruelty content are not sufficiently captured by the existing priority offences, and this is also true of some aspects of torture content. We explain this further in Section 3.

How to navigate this document

- 2.8 This document is broken down into the following six sections. The text below explains where each section sits and what information is included within.
- 2.9 Section 3 sets out our proposed approach to these offences and underlying rationale.

- 2.10 Sections 4, 5 and 6 provide our analysis of the causes and impacts of online harms relating to animal cruelty and torture content.
- 2.11 Section 7 is the proposed Risk Assessment Guidance and Risk Profiles.
- 2.12 Section 8 sets out proposed amendments to the illegal content Codes of Practice;
- 2.13 Section 9 sets out our proposed approach to and the text of our draft Illegal Content Judgements Guidance.
- 2.14 We have also included Annexes within this document that provide guidance on how to respond to this consultation and set out our approach to impact assessments:
- Annex 1 details how stakeholders can respond to our consultation;
 - Annex 2 sets out Ofcom's consultation principles;
 - Annex 3 provides our consultation coversheet;
 - Annex 4 details of our consultation questions;
 - Annex 5 contains our Equality Impact Assessment and Welsh Language Assessment; and
 - Annex 6 contains more detail on our proposed approach to the section 127(1) offence, and how we have considered stakeholder responses concerning animal cruelty to our November 2023 Consultation.

3. Torture and animal cruelty

Background and context

- 3.1 This section introduces the offences we have covered in this consultation. It also explains why we have approached them in the way we have.
- 3.2 As noted in our November 2023 Consultation, the Act gives providers a range of new duties in relation to ‘illegal content’. This is a new concept created by the Act, defined as ‘content that amounts to a relevant offence’.
- 3.3 The Act sets out the ‘relevant offences’ in scope of the criminal law in the UK for the purposes of identifying ‘illegal content’. Under the Act, the relevant offences comprise:
- a) A list of priority offences; and
 - b) ‘Non-priority’ (or ‘other’) offences.⁴
- 3.4 Providers have a number of duties in relation to these offences, which differ depending on whether the service is a user-to-user (U2U) or search service, and whether the offence is a priority, or a relevant non-priority offence. These duties can be broadly broken down into two categories:
- a) duties to assess risks of harm arising on the service, otherwise referred to as the ‘risk assessment duties’; and
 - b) duties to manage and mitigate those harms, otherwise referred to as the ‘illegal content safety duties’.
- 3.5 The priority offences⁵ are the most important offences as defined by Parliament. All providers will need to take proportionate measures to minimise the risk of, or prevent users from, encountering content amounting to one of these offences. They must also take down such content when they become aware of it. Providers of U2U services must also consider the risk that their service will be used for the commission of, or to facilitate the commission of, a priority offence. (This duty does not apply to search services.)
- 3.6 The relevant non-priority offences are offences under UK law which are not priority offences under Schedules 5, 6 or 7 of the Act, but have specific characteristics.⁶ Providers must have in place proportionate systems and processes to take down non-priority illegal content of which they are aware, but are not under duties to take steps in relation to content of which they are not aware. There is no duty for U2U services to consider whether their service will be used for the commission of, or to facilitate the commission of, a non-priority offence.

⁴ The specific offences included in the Act, and whether they are defined as priority or ‘other’ offences has been decided by Parliament. This is not a matter over which Ofcom has any discretion.

⁵ The priority offences are set out in Schedules 5 (Terrorism offences), 6 (CSEA offences) and 7 (Priority offences) of the Act.

⁶ These characteristics are set out in paragraph 2.19 of our November 2023 Consultation.

Animal cruelty

- 3.7 The Act makes the animal cruelty offence a priority offence.⁷ A person commits this offence where they know or ought reasonably to know that their conduct would cause, or would be likely to cause, unnecessary suffering to a protected animal.⁸
- 3.8 The animal cruelty offence, which requires a person to commit an action that would cause, or would be likely to cause, unnecessary suffering, cannot itself be committed in the form of content. In other words, although online content can clearly depict an act of animal cruelty that would amount to an offence, the content cannot itself cause suffering to an animal.
- 3.9 Under the Act, the offences of encouraging a priority offence, assisting a priority offence or conspiracy to commit a priority offence are all priority offences in their own right.⁹ These offences can be committed online in the form of content. For example, a user could use a service to:
- a) urge others to commit the offence (encouraging);
 - b) give them helpful advice on how to commit the offence (assisting); or
 - c) plan with others to commit the offence (conspiracy). In our view, a livestream of animal cruelty being carried out, which users choose to watch knowing what they will see, can be characterised as a conspiracy to commit the animal cruelty offence and may therefore amount to priority illegal content (and should be taken down).
- 3.10 However, on the face of it, there appears to be a risk that, taken in isolation, the priority animal cruelty offence does not deal with pre-recorded animal cruelty in a suitably robust way. This is because not all pre-recorded depictions of cruelty to animals will amount to encouraging, assisting or conspiring to commit an action that would cause, or be likely to cause, unnecessary suffering to an animal, (and even where they do, the information needed to make an illegal content judgement may well not be available to the provider of the service).
- 3.11 This creates a risk that if a service provider looked at the animal cruelty offence in isolation, it may conclude that a pre-recorded depiction of a real animal being tortured was not illegal content and therefore it may not realise it should remove such content.
- 3.12 This would be a deeply undesirable policy outcome. As we detail in Section 5, the evidence we have available shows us that animal cruelty content is deeply damaging, and unacceptable to any right-thinking person.
- 3.13 A similar challenge arises in relation to depictions of real-life torture of humans. Such content might be priority illegal content because of another priority offence – for example extreme pornography, child sexual abuse or terrorism. But not all content showing real-life torture of humans would fall into these categories. This means that if a service provider looked at the priority offences in the Act in isolation there is a risk that it might conclude it

⁷ The offence is in section 4(1) of the Animal Welfare Act 2006.

⁸ The definition of ‘protected animal’ is detailed and it is not necessary to think about it in detail except when considering whether a specific item of content relates to a protected animal. See paragraphs 9.27, 9.28 and our draft Illegal Content Judgements Guidance text in paragraphs 9.48 and 9.49 for more detail.

⁹ We note, these additional “commission or facilitation” duties do not apply to search services, which only need to consider risks of illegal content.

was not obliged to remove some deeply harmful depictions of human torture. Once again, this would be a highly undesirable policy outcome.

- 3.14 Clearly, some kinds of depictions of extreme cruelty to animals and humans are necessary in a democratic society. Without images or videos of wars, content exposing the mistreatment of prisoners of war, or crimes, very important issues of public interest would not be known. Content showing the suffering of animals is often disseminated by those campaigning for better treatment of animals. Drama and fiction may require the portrayal of such acts. It is not illegal for content to be upsetting, tasteless or shocking.
- 3.15 However, there is a class of content which goes well beyond what is acceptable in a pluralistic society, which is created and shared by or for those who enjoy sadism. It is not merely a theoretical concern that such content might exist online. A recent conspiracy case, in which monkeys were tortured to order, raised very significant public concern and led to successful prosecutions in the US and the UK.¹⁰ Similarly, it was widely reported that one of the killers of Brianna Ghey, watched 'real' murders and torture on the dark web prior to the attack.¹¹
- 3.16 We have therefore explored whether there are other provisions in law which would require service providers to take down such content. Specifically, in this consultation, we have also considered the non-priority offences which mean that this sort of content is illegal content and, once providers are aware of it, should be taken down swiftly.

Possible non-priority offences

- 3.17 When it comes to this sort of 'real' animal and human murder and torture content, which is not news reporting or political comment, there are two potentially relevant non-priority offences.
- a) Section 127(1) of the Communications Act 2003 (the '**s.127(1) offence**');¹² and
 - b) Section 2 of the Obscene Publications Act 1959 (the '**OPA offence**').
- 3.18 Under the s.127(1) offence, it is an offence to send, or cause to be sent, online, a message (or other matter) that is grossly offensive or of an indecent, obscene or menacing character where the sender intended, or recognised, at the time of sending, that it may be taken to be grossly offensive, indecent, obscene, or menacing by a reasonable member of the public.

¹⁰ [Ringleader of global monkey torture network, 'The Torture King', is charged - BBC News; https://news.sky.com/story/worcestershire-woman-pleads-guilty-over-monkey-torture-videos-13131135.](https://news.sky.com/story/worcestershire-woman-pleads-guilty-over-monkey-torture-videos-13131135)

¹¹ [Brianna Ghey inquest to look into killer's school transfer - BBC News; How torture and murder-obsessed Scarlett Jenkinson and Eddie Ratcliffe meticulously planned Brianna Ghey's brutal killing | The Independent.](#)

¹² Section 127(2) of the Communications Act 2003 makes it an offence if, for the purposes of causing annoyance, inconvenience or needless anxiety to another, a person sends by means of an electronic communications network a message which they know to be false; causes such a message to be sent, or persistently makes use of an electronic communications network. The provisions of s.127(2) relating to false messages have been repealed in England, Wales and Northern Ireland, but not in Scotland. Consequently, the false communications offences in s.127(2) could still give rise to illegal content for the purposes of the Act. However, the s.127(2) false communications offence overlaps very significantly with priority offences such as harassment, and foreign interference. It also overlaps with the new false communications offence. The same is true of the "persistent use" offence, which we think is already adequately covered by the priority harassment offences.

- 3.19 Under the OPA offence, it is an offence to publish an obscene article, which is an article which, taken as whole, is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.
- 3.20 The offences are similar in that they both target obscenity and would capture the content which is of concern to us. However, we do not think it necessary or appropriate to ask service providers to consider content under two non-priority offences, where one would be sufficient.
- 3.21 Both of the offences seem to be worded broadly, but are not as broad as they appear because in practice the UK courts are required to apply them consistently with the right to freedom of expression. This means that Ofcom's regulatory products and, in particular, the Illegal Content Judgements Guidance, must be drafted in a way which adequately protects users' rights to freedom of expression. We also recognise that content moderators are unlikely to have a detailed knowledge of UK criminal case law, that there is a lack of relevant case law in any event, and that there are risks to freedom of expression if non-experts try to make complex legal judgements quickly about broadly-worded offences.
- 3.22 We propose to focus on the s.127(1) offence for the following reasons:
- a) While both offences are difficult, the s.127(1) offence is likely to be somewhat easier for providers to understand. The wording of section 2 of the Obscene Publications Act 1959 is older, and we consider that the words 'tending to deprave or corrupt' (when taken without the words added by schedule 6 of the Online Safety Act) are likely to be particularly difficult for service providers to apply in practice.
 - b) Under Schedule 6 of the Online Safety Act, section 2 of the Obscene Publications Act 1959 is a priority offence – but only if the obscene article in question tends to deprave or corrupt others by encouraging them to commit one of the child sexual exploitation or abuse offences. In our view there is some risk of confusion if we publish regulatory instruments in which the same offence is both a priority and a non-priority offence.
 - c) Although the s.127(1) offence is arguably wider than the OPA offence, and therefore may pose more risks to freedom of expression, we think this can be managed by focusing on the parts of it which matter to capture the content which is not caught by other priority offences. See Annex 6 below.
- 3.23 We are also proposing to focus on the 'obscene' content element of the offence, and not other aspects of the s.127(1) offence, which overlap with other priority offences, and we consider pose greater potential impacts on the freedom of expression of users.¹³ We emphasize that 'obscene' in this context does not mean 'pornographic'. Pornography is not illegal. We are focusing on obscenity in its sense of content being atrocious or very horrific. However, it will be necessary to give very clear guidance to service providers in order to ensure that it is sufficiently clear that public interest content such as journalism exposing wrongdoing is not illegal content. It is not illegal to expose atrocities.
- 3.24 In conclusion, we provisionally consider that illegal animal cruelty and human torture content, which is not covered by the priority offences, would be likely to constitute an offence under the obscenity provision of s.127(1) of the Communications Act. Therefore,

¹³ For a more detailed discussion of our rationale for our approach to the s.127 offence (and how we've addressed comments from responses to our November 2023 Consultation in relation to non-priority offences and fraud offences), please see Annex 6.

we consider that service providers should remove such content when they encounter it. In order to secure this outcome, we propose to provide guidance in the Illegal Contents Judgements Guidance about how service providers should apply s.127(1) in this context. We have set out a draft version of this guidance below in Section 9 of this document.

- 3.25 We consider that this approach will help ensure that providers deal with the threat to users posed by animal cruelty and human torture content not captured by other illegal harms.

4. Register of Risks: animal cruelty and s.127(1) offences

Introduction to the draft Register of Risks for the animal cruelty and s.127(1) offences

- 4.1 In [Volume 2 of our November 2023 Consultation](#), we laid out our approach to Ofcom's risk assessment (Chapter 5), and the purpose and methods for our Register of Risks for illegal content (Chapter 6). Chapter 6 was split into three parts:
- a) Part 1 (Chapters 6A-6U): we presented a detailed analysis of 18 kinds of illegal harm, and their associated risks, on user-to-user (U2U) services.
 - b) Part 2 (Chapter 6T): we set out the risks of harm from illegal content on search services. The rationale for having a separate section on search services was the differing risk assessment duties that the Online Safety Act (the Act) places on Ofcom, and the fundamental differences between search services' limited functionality compared to user-to-user (U2U) services.
 - c) Part 3 (Chapter 6U) we assessed the characteristics of a service relating to governance, systems and processes (GSP). The rationale for having a separate section was that the analysis of risk arising from these characteristics cuts across the different kinds of illegal harms. Governance, systems and processes are also important in offering ways for providers to mitigate the risk of different kinds of illegal harms to users on their service.
- 4.2 As explained in the Overview to this consultation, the animal cruelty offence was added at a fairly late stage to the Bill (what would become the Act), and we said in our November 2023 Consultation that we would consult on this harm area at a later date.
- 4.3 We are therefore consulting on two additional draft Register of Risks sections (the animal cruelty priority offence and the s.127(1) non-priority offence), and invite feedback on their clarity and ability to assist providers to inform how they evaluate risks on their services. These are sections 5 and 6 in this document.
- 4.4 Both sections consider the risks of harm on user-to-user services and, so far as is possible, the risks on search services, corresponding to Parts 1 and 2 of the Register of Risks volume in the November 2023 Consultation. We are not proposing any changes to our assessment of the characteristics of a service relating to governance, systems and processes (Part 3 of the Register of Risks volume in the November 2023 Consultation). We do not think any are necessary – this part of our November 2023 Consultation did not focus on specific harms.
- 4.5 Having reviewed responses to this consultation, we plan to publish our final decisions as part of our full Statement on Illegal Harms and include the final version of the two Register of Risks sections within Part 1 of the final version of the full Register.
- 4.6 The information about search services included at the end of each of this consultation's Register of Risks sections will be, if appropriate, inserted in their final form – as additional sections or incorporated into existing sections – into Part 2 of the final version of the full Register.

Stakeholder responses to Ofcom's November 2023 Consultation which were relevant to the Register of Risks

- 4.7 Stakeholders raised various concerns around the risks of animal cruelty content online. They flagged the sometimes extreme suffering of the animals involved, including where the cruelty is not obvious to viewers. They noted the impacts of viewing animal cruelty content on users of online services such as psychological distress, desensitisation, or even potentially leading someone to commit further animal cruelty offences or other offences such as cruelty to humans.
- 4.8 The responses referred to a wide range of animal cruelty-related activities that manifest online, such as extreme torture videos and images; networks of bad actors coming together to discuss, encourage and commission acts of animal cruelty; livestreamed animal fights; illegal trade of animals and animal parts. The evidence for some of these and the relevant risk factors are explored in this section.
- 4.9 Some stakeholders referred to types, functionalities and features of online services which could be factors in animal cruelty content online, including the posting and sharing of images and video, comments sections, messaging services, hyperlinking, recommender systems and the apparent ineffectiveness of moderation processes. The evidence for some of these factors and functionalities relevant to the priority offence are explored in this section.

Consultation questions

- 4.10 We have set out specific consultation questions here on issues where we would particularly welcome feedback and further supporting information to inform our final version of this Register. See Consultation Annexes, for more information about how to respond to our consultation.

Question 1: Do you have any comments on Ofcom's assessment of the causes and impacts of online harms? Do you think we have missed anything important in our analysis? Please provide evidence to support your answer.

Question 2: Do you have any views about our interpretation of the links between risk factors and different kinds of illegal harm? Please provide evidence to support your answer.

Draft Register of Risks sections

- 4.11 On the following pages we set out our draft sections for the Register of Risks:
- 5. Draft Register of Risks section: animal cruelty offence
 - 6. Draft Register of Risks section: obscene content showing torture of humans and animals (the s.127(1) offence)
- 4.12 These are intended to act as standalone sections and will be separated from the consultation reasoning and wider context set out in the sections above when added to our full Statement on Illegal Harms.

5. Draft Register of Risks

section: animal cruelty offence

Summary analysis for animal cruelty offences: How harms manifest online, and risk factors

This section summarises the risks of harm to individuals from the animal cruelty offence.

The existence of online activities that encourage, assist or commission acts of animal cruelty may result in content being made available which may distress a user, or cause them to engage in harmful or illegal behaviours and activities themselves. This section covers several factors which could be associated with the offence. Of these, we consider the following to be key and have included them in the Risk Profiles (see Section 7).

Service type risk factors:

As with almost all harms types, **social media services** are a prominent risk factor for this offence, since content depicting cruelty to animals (which may in itself encourage further animal cruelty) can receive wide reach.

Our evidence also points to **messaging services** being a risk factor, in that they allow perpetrators to form a community and to discuss ideas for, or commission, acts of cruelty. They may also assist in the production and publication of animal cruelty content, or share it via the messaging services.

Functionalities risk factors:

Services with the ability **post images or videos** (which may be social media services) is a prominent risk factor for this offence, particularly where it can encourage or facilitate further acts of animal cruelty. **Commenting on content** can also enable people to engage with the content, including potentially encouraging further acts of cruelty or commissioning further content depicting it.

Our evidence also points to services **where users can form user groups or send group messages** being a prominent functionality that is a risk factor, for the same reason that we believe messaging services to be a risk factor – it may allow perpetrators to come together to discuss and encourage, facilitate or commission acts of animal cruelty. This may be especially the case for closed and private groups.

Introduction

5.1 This section summarises our assessment of the risks of harm to individuals presented by:

- a) content on U2U and search services that may amount to the animal cruelty offences listed under 'Relevant offences' below; and
 - b) the use of U2U services for the commission and/or facilitation of these offences (collectively the 'risks of harm').
- 5.2 We set out the characteristics of U2U services and, so far as possible, search services, that we consider are liable to increase the risks of harm. 'Harm' means physical or psychological harm. We discuss physical and psychological harm as part of our assessment of the risks of harm, and where possible consider the impact of cumulative harm where content of a particular kind is repeatedly encountered by an individual, or where content of a particular kind is encountered in combination with content of a different kind.

Relevant offences

- 5.3 The Act requires Ofcom to consider the risk of harm connected with the priority offences as set out in the Act. This section considers the risk of harm connected with the offence that concerns the unnecessary suffering of animals (section 4(1) of the Animal Welfare Act 2006), referred to as the animal cruelty offence in this consultation. The Act also covers inchoate offences, such as attempting, conspiring, encouraging, assisting, or aiding and abetting the commission of priority offences.
- 5.4 We recognise that most acts of cruelty occur offline. The publication *online* of content relating to or depicting these offline acts does not in itself cause the animal unnecessary suffering (or further suffering) and therefore cannot constitute an offence under the Animal Welfare Act. Where content depicts past instances of animal cruelty, providers should consider the evidence provided on the non-priority offence under s.127(1) of the Communications Act in the Register of Risks for obscene content showing torture of humans and animals, and the Illegal Content Judgements Guidance.
- 5.5 However, where a user publishes content showing, describing or discussing cruelty to animals in order to explicitly encourage, assist or conspire to commit acts of animal cruelty, this would create priority illegal content under the Act. This is because encouragement, assistance and conspiracy to commit a priority offence are each priority offences in their own right. In our view, a livestream of animal cruelty being carried out, which users choose to watch knowing what they will see, can be characterised as a conspiracy to commit the animal cruelty offence and is likely to amount to priority illegal content.
- 5.6 For more details on how providers can assess whether content amounts to the animal cruelty offence, see our Illegal Content Judgements Guidance.

Use of the service for commission or facilitation

- 5.7 A user may also use online services to facilitate acts of animal cruelty or for the commission of acts of animal cruelty. In some cases, it may be that the ability to disseminate animal cruelty content online is part of the motivation for the animal cruelty offences being committed.
- 5.8 Online services may enable networks of bad actors to form, share ideas, view and engage with animal cruelty content, and arrange for future activities. They may also provide a medium on which these acts may be advertised or where content made about them may be subsequently sold and shared online. Content published for this purpose may then in itself potentially encourage *further* illegal acts.

Other offences

- 5.9 Acts of animal cruelty have demonstrable links to other harmful acts which may manifest online, such as extreme pornography (bestiality) and child abuse.
- a) **Extreme pornography:** the depiction of the sexual abuse of animals is an example of the animal cruelty and torture content which could manifest online (and is discussed in this section). With regard to bestiality, Ofcom recognises that possession of an image depicting the sexual abuse of an animal is an illegal offence of possession of extreme pornography and a primary priority harm under the Online Safety Act 2023. The extreme pornography offence is explored in Chapter 6L in [Volume 2 of our November 2023 Consultation](#).
- Child abuse and grooming:** patterns of child abuse can be escalated, with the perpetrator inciting the child to include animals in the sexual abuse, which can cause additional psychological harm to the child. The priority offences of child sexual exploitation and abuse (CSEA) and grooming is explored in Chapter 6C in [Volume 2 of our November 2023 Consultation](#).
- 5.10 There is also some evidence that viewing acts of animal cruelty can be a precursor to the viewer performing those acts themselves, or that viewing or performing acts are an indicator for that person potentially ‘graduating’ to other illegal acts in the future, such as murder and child abuse.¹⁴ The research on these links is not specific to the posting or viewing of content *online*, nor on viewing content that encourages, assists or conspires to commit acts of animal cruelty. However, the evidence presented in this section demonstrates that this type of content is available online. As such, it cannot be discounted that this is one way in which someone may be exposed to it, after which they may go on to perform illegal acts in future.

How animal cruelty manifests online

- 5.11 This section is an overview which looks at how animal cruelty manifests online, and how individuals may be at risk of harm.
- 5.12 Ofcom’s Online Experiences Tracker suggests that 76% of people in the UK are highly concerned about animal cruelty content online.¹⁵ The RSPCA have reported that animal cruelty cases are rising in number.¹⁶

¹⁴ This subject has been the subject of academic discourse for many years. There are several older studies on the subject including Thompson, K.L. and Gullone, E. 2006. [An investigation into the association between the witnessing of animal abuse and adolescents behaviour toward animals](#), *Society & Animals* 6, 221-243; McVie, S. 2007. [Animal abuse among young people aged 13 to 17](#). *Royal Society for the Prevention of Cruelty to Animals/University of Edinburgh*.

More recent research has also drawn links between a child viewing animal abuse or other types of familial violence and going on to abuse humans or animals themselves, such as Jegatheesan, B., Enders-Slegers, M-J., Ormerod, E. and Boyden, P. 2020. [Understanding the link between animal cruelty and family violence: the bioecological systems model](#), *International Journal of Environmental Research and Public Health* 17.

¹⁵ Ofcom, [Online Experiences Tracker](#), 2024. Fieldwork was carried out in a four-week period in January 2024.

¹⁶ <https://www.rspca.org.uk/-/news-cruelty-to-cats-increased-last-year>; <https://www.rspca.org.uk/-/news-one-dog-abused-every-hour> [both accessed 24 June 2024].

- 5.13 Although there is not clear evidence for a corresponding increase in *online content*, especially that which encourages, facilitates or conspires to commit acts of animal cruelty, we believe it is a reasonable assumption that as the prevalence of an offence increases generally, the online manifestation of that offence is likely to rise with it. The National Wildlife Crime Unit in the UK notes that the internet has enabled various forms of wildlife crime, including the promotion or facilitation of illegal activities such as hare coursing competitions.¹⁷

Risks of harm

- 5.14 Animal cruelty content takes various forms. The most extreme examples involve physical and psychological torture, bestiality and sexual abuse, live animals being crushed or eaten, fighting events, and gratuitous imagery of wounded and dead animals.
- 5.15 For some animal content online, users may not recognise mistreatment. ‘Fake rescue’ videos are manufactured scenarios in which a predator and other animals are introduced and then the “prey” is rescued, often involving cruelty to all animals involved – this can be paired with ‘fake outrage’.¹⁸ These play on viewers’ care for animals and prompt (even implicitly) comments praising the poster for their actions.
- 5.16 In other cases, animals may be shown being kept as pets in unsuitable conditions (especially wildlife as opposed to domesticated animals), being dressed up and forced to behave like humans (e.g. walking on hind legs, dancing, or acting like a baby), or being put in situations where they show signs of fear or distress (but with behaviour which is not widely understood as fear or distress, such as monkeys “grinning” or slow lorises “laughing”). In these scenarios, it is possible that the content creators themselves are not aware of the cruelty and do not intend to harm the animal. However, if they ought reasonably to be aware, they would be committing the animal cruelty offence.
- 5.17 This section will focus on evidence for the risk factors of online services that can contribute either to the priority offences explained above, to the use of the service to facilitate them or for their commission. However, it will likely also cover evidence that relates to more general animal cruelty content online. This may include content which would also amount to the separate non-priority ‘s.127(1) offence’, which will be covered in Section 6 of this consultation.
- 5.18 While not all animal cruelty content will explicitly encourage, assist or conspire to the animal cruelty offence, we will consider the risk factors on the basis that the animal cruelty-related content online may inherently create demand for more of the same, and that its existence can therefore contribute to activities which *do* explicitly encourage, assist or conspire.
- 5.19 Viewing illegal animal cruelty content could pose risks of harm to users online: in the case of the animal cruelty offence, viewing content which encourages, assists or conspires to animal cruelty may distress a user, or alternatively persuade them to engage in harmful or illegal behaviours themselves. There may also be a cumulative impact from users being

¹⁷ National Wildlife Crime Unit, [Cyber enabled wildlife crime](#). [accessed 9 May 2024].

¹⁸ Harrington, L.A., Elwin, A., Paterson, S. and D’Cruze, N. 2023. ‘[The viewer doesn’t always seem to care – response to fake animal rescues on YouTube and implications for social media self-policing policies](#)’, *People and Nature* 5; World Animal Protection, <https://www.worldanimalprotection.org/globalassets/pdfs/reports/english/views-that-abuse.pdf>

repeatedly exposed to animal cruelty-related content, not just to content which would constitute the offence.

- 5.20 The information presented in this section mostly does not provide evidence for animal cruelty online as an issue specific to the UK or UK users of online services. As such, this section will consider animal cruelty online primarily as a global phenomenon.
- 5.21 When discussing animal cruelty content online, we primarily refer to text, images and videos (livestreamed and/or on-demand). This may be on social media sites, video-sharing services and messaging services. We acknowledge that while sites that facilitate payments for acts of animal cruelty (or for content depicting these acts) are unlikely to host content that directly constitutes the animal cruelty offence, payments services are part of the wider ecosystem contributing to the issue.

Evidence of risk factors on user-to-user services

- 5.22 We consider that the risk factors below are liable to increase the risks of harm relating to encouraging, assisting or conspiring to commit animal cruelty, and to facilitating or committing animal cruelty. This is also summarised in the box at the start of the section.

Risk factors: Service types

- 5.23 Research indicates that the following types of services are used to facilitate or commit offences related to animal cruelty.

Social media and video-sharing services

- 5.24 Evidence shows that animal cruelty content can often be shared on social media and video-sharing services. For instance, the Social Media Animal Cruelty Coalition (SMACC) has published research which identified channels on large social and video-sharing services – some of which have thousands or even millions of subscribers/followers – which share animal cruelty content that can get a significant numbers of views.¹⁹ SMACC has also found that bestiality and animal sexual abuse content exists on these types of services.²⁰
- 5.25 Researchers have documented certain types of animal-related content which can be cruel – such as crushing videos, fights and ‘fake rescues’ – on video-sharing services, some gaining millions of views.²¹

¹⁹ Social Media Animal Cruelty Coalition, 2021. [Making money from misery](#), p.26. Note that SMACC’s publications referenced across this Register of Risks section, and the next section on the obscene torture content offence, are among the very few systematic studies into animal-cruelty related content online, some of which may constitute the animal cruelty or obscene content offence. We refer to these sources as evidence that potentially harmful and illegal content exists online, not as an indicator of the quantity or prevalence of this content. This caveat also applies to the research produced by other charities and non-profit organisations, such as the RSPCA, Born Free USA, Lady Freethinker and the Alliance to Counter Crime Online.

²⁰ As reported directly to Ofcom by the Social Media Animal Cruelty Coalition based on recent, as-yet-unpublished data from April 2024; also Social Media Animal Cruelty Coalition 2023. [The cruelty you don’t see](#), p.51-52.

²¹ Carvalho, A.F., de Moraes, I.O.B., and Souza, T.B. 2023. ‘Profiting from cruelty: digital content creators abuse animals worldwide to incur profit’, *Biological Conservation* 287.; World Animal Protection, 2021. [Views that abuse: the rise of fake "animal rescue" videos on YouTube](#).

- 5.26 The UK Safer Internet Centre has also reported an increase in reports of animal abuse content across 2023 and 2024.²²
- 5.27 Recent research published jointly by the RSPCA, Scottish SPCA and the Ulster SPCA showed that 43% of 16-17 year olds and 22% of adults had witnessed animal cruelty content online (including on social media services).²³ Ofcom's own research (including the Online Experiences Tracker) and the other evidence that we note in this section also indicates that the types of content which may constitute an offence appears still to be quite widespread online and on social media.
- 5.28 An investigation conducted by the BBC in 2023 revealed an online community operating across video-sharing and messaging services to encourage and conspire to commit and share acts of cruelty towards animals, including members sending ideas of cruel acts that could be filmed and shared.²⁴
- 5.29 Evidence for videos of organised dog fighting or promotion of fights has been found on social media and video-sharing services.²⁵ Similarly, imagery of dogs killing wildlife such as foxes and badgers has been identified on social media sites, including a case involving a UK user.²⁶

Messaging services, discussion forums and chat room services

- 5.30 Messaging services, particularly those with encrypted messaging, can be used to share animal cruelty content. This is because perpetrators can use these services to communicate easily, keeping their messages private and avoiding detection by the services or authorities.
- 5.31 Members of the monkey torture ring investigated by the BBC in 2023 posted videos on a video sharing service but links in video descriptions encouraged viewers to move to private messaging services to get more extreme animal cruelty content.²⁷ Lady Freethinker noted that users of online social media services involved in monkey torture networks were also facilitating this content being shared in private groups on messaging and forum services.²⁸
- 5.32 SMACC have noted that 'hopping' across several online services is an emerging trend from networks of bad actors engaging in animal cruelty-related activities.²⁹ They may do so to avoid detection or to ensure the continuity of their community should they be removed

²² UK Safer Internet Centre, 2024. [UK Safer Internet Centre sees concerning rise in animal abuse content](#). [accessed 24 June 2024]

²³ RSPCA, 2024. [Kindness Index Report 2024](#). The data showing that a significant number of young people view animal cruelty content online appears to reflect older research from the RSPCA, which found that 48% of the surveyed 10-18 year-olds had witnessed animal cruelty, of whom almost a quarter (23%) had seen it on social media: RSPCA, 2018. [The RSPCA's Generation Kind](#), p.2, and footnote 2 [accessed 9 May 2024]. In a related document published at a similar time, they found that one in three 10-15 year-olds reported seeing animal cruelty on social media: RSPCA, 2018. [Building a kinder generation](#), p.7. [accessed 9 May 2024]

²⁴ BBC, 2023 [Monkey Haters](#) (documentary) [accessed 27 March 2024].

²⁵ Montrose, Kogan and Oxley. 2021. [The role of social media in promoting organised dog fighting](#), *The Veterinary Nurse*. [accessed 22 April 2024]

²⁶ SSPCA, 2023. <https://www.scottishspca.org/news/former-gamekeeper-who-filmed-animal-fights-for-tik-tok-sentenced>

²⁷ BBC, 2023 [Monkey Haters](#) (documentary) [accessed 27 March 2024];

²⁸ Lady Freethinker <https://ladyfreethinker.org/youtube-monkey-haters-form-private-group-where-members-are-paying-to-have-baby-monkeys-tortured-and-killed-on-camera/> [accessed 28 June 2024]

²⁹ As reported directly to Ofcom by the Social Media Animal Cruelty Coalition based on recent, as-yet-unpublished data from April 2024.

from one service. This includes using standalone messaging services or messaging surfaces on social media sites to communicate with others.

File-storage and file-sharing services

- 5.33 We believe that the ability to share and store animal cruelty content, perhaps with the intention of acquiring more derived from future acts of cruelty, is a likely risk factor for this type of content. File-sharing services are known to be used to share and store other types of illegal content (such as child abuse imagery and terrorist content) for personal use or distribution.³⁰ Links to file-sharing services may be shared via other online services, including social media and messaging services. However, we are not currently aware of direct evidence for file-sharing services being used to do so in the case of animal cruelty content which would constitute the offence, other than where respondents to our November 2023 Consultation flagged file-sharing services as a potential risk factor.³¹

Adult services

- 5.34 We have noted evidence above that bestiality content has been found on social media services. A study of extreme pornography cases in England and Wales between 2015 and 2017 found that the most commonly charged category was that of extreme pornography involving an animal.³² As such, it is likely that this is reflected to some extent online, and specifically on online adult services.
- 5.35 The evidence for extreme pornography was explored in Chapter 6L of Volume 2 of our consultation on illegal harms.

Risk factors: User base

User base size

- 5.36 Animal cruelty content, or which encourages, assists or conspires, appears on services with both large and small user bases. Different user base size can pose different risks.
- 5.37 The larger a service's user base, the greater the number of people who are likely to encounter content on it, meaning that content can receive substantial amounts of engagement. As shown through the evidence presented in this section (including that which was collected by SMACC), animal cruelty content exists on some of the largest user-to-user services and appears to be largely shared openly.
- 5.38 Bad actors may also post less-obviously cruel content or content which is not explicitly encouraging animal cruelty on larger services. This may desensitise viewers to seeing animals in unsuitable conditions and being treated inappropriately,³³ thereby potentially emboldening the bad actors to post more extreme content with the same wide distribution in future.

³⁰ Our analysis suggests that file-storage and file-sharing services post a particularly high risk of disseminating CSAM, terrorist content and non-consensual intimate imagery (as part of intimate image abuse) – this was covered in the relevant chapters in Volume 2 of our November 2023 Consultation.

³¹ Consultation response from the [Born Free Foundation](#).

³² McGlynn, C. and Bows., H. 2019. Possessing Extreme Pornography: Policing, Prosecutions and the Need for Reform, *The Journal of Criminal Law*, 83(6), p.481-482.

³³ Born Free USA, 2022. [Their lives for your likes: the exploitation of wild animals on social media](#) [accessed 10 May 2024].

- 5.39 Also, by posting content with descriptions containing external links on larger services, they can funnel viewers through to smaller and more private services or parts of services, such as messaging services and private and invite-only groups.³⁴ Some of these groups may be communities *within* larger services which, while small, are still publicly accessible and have few barriers to users joining.³⁵
- 5.40 The smaller a provider's user base, bad actors may be incentivised to publish the most extreme content there from the start, or to organise and conspire with other like-minded people. Smaller groups of users can more easily share tips on how to avoid detection by the service's moderation systems – this has been evidenced for bad actors engaged in the illegal wildlife trade in specific-purpose groups or pages on social media services, many of which were relatively small (and in some cases, private),³⁶ and it seems reasonable that this could also hold for animal cruelty content.

Risk factors: Functionalities and recommender systems

User identification

Anonymous user profiles and fake user profiles

- 5.41 Anonymous user profiles can help bad actors evade detection, allowing them to encourage, assist or conspire to commit illegal acts without being identifiable. We believe it is reasonable to presume that anonymous user profiles increase the risks of users posting and engaging with animal cruelty content.

User networking

User connections

- 5.42 The ability for users to connect with one another can facilitate offences, as it allows them to discuss ways in which animals may be harmed, and to share imagery showing these acts, or engage with trade relating to animals, animal products and animal cruelty content. We believe it is possible that this is a key risk factor for animal cruelty related harms online. Users do not need to be directly connected to each other to see content posted (where it is in public feeds, for instance), but users that are connected, particularly through group messaging, are more enabled to discuss, conspire to commit or commission acts of animal cruelty together – see the following paragraphs.

User groups and group messaging

- 5.43 Animal cruelty activity and content can appear in public group spaces. For instance, a Lady Freethinker study identified over 150 user groups and pages on a social media service (which could be searched within the service itself) centring around dog-fighting – including

³⁴ BBC, 2023. [Monkey Haters](#) (documentary) [accessed 27 March 2024].

³⁵ As reported directly to Ofcom by the RSPCA in engagement held in autumn 2023, and by the Social Media Animal Cruelty Coalition based on recent, as-yet-unpublished research from April 2024, which found that individuals (including children) can easily join private groups or forum by requesting access.

³⁶ Alliance to Counter Crime Online, 2020. [Two Clicks Away: wildlife sales on Facebook, Appendix B, which documents the Pages and Groups identified, including membership sizes](#) [accessed 8 May 2024].

the facilitation of this activity through selling of dogs, encouraging it through content captions, and conspiring to commit animal cruelty through promoting or depicting fights.³⁷

- 5.44 However, some of the illegal animal cruelty content exists within closed groups and messaging services. Closed groups and group messages allow perpetrators to form a community around a shared interest and, for example, discuss ideas for and commission acts of animal cruelty.³⁸

User communication

Posting content (images and videos)

- 5.45 The ability for users to post content, in particular images and videos, is a known risk factor for animal cruelty content, including that which encourages, assists or conspires. Posting content can allow bad actors to share animal cruelty content with a potentially large number of users. Research by various organisations has identified accounts video-sharing and social media services, and across other social channels, which publicly share animal cruelty content that can get significant numbers of views.³⁹
- 5.46 Content could explicitly encourage, assist or conspire to commit acts of animal cruelty, such as publicising upcoming animal fighting events (which may or may not be recorded and uploaded, or livestreamed) or clearly showing approval for the cruelty depicted. This could then perpetuate an environment in which these behaviours are encouraged and users of online services encourage the creation of more content like this.
- 5.47 However, even if it does not directly encourage, assist or conspire, the publishing of animal cruelty content may normalise harmful behaviours towards animals and desensitise users of online services to these acts. This may then itself result in users encouraging increasingly extreme acts of animal cruelty to be carried out in order to be published online.

Re-posting and forwarding content

- 5.48 The ability to repost or forward content may be a risk factor for the animal cruelty offence in that bad actors may re-share content with others within their network, as a way to show approval for the acts and encourage further cruelty. Other users may share content because they want to demonstrate their outrage or speak out *against* this type of content.
- 5.49 There is also the risk that users inadvertently re-post or forward animal cruelty content because they do not realise what it is. They may think the content is cute, funny, or depicts an animal being rescued, and therefore want to share it.⁴⁰ However, bad actors may in part rely on this to achieve a wider audience for their content, normalising the behaviour, and encouraging further acts of animal cruelty.

³⁷ Lady Freethinker 2019. The deadly, underground world of dogfighting on Facebook. <https://static1.squarespace.com/static/5e3a7fb845f8c668df48d437/t/5e60b25daecefd6c530b8a80/1583395439576/Deadly-Dogfighting-on-Facebook-An-LFT-Report-May-26-2019.pdf>

³⁸ BBC, 2023 [Monkey Haters](#) (documentary) [accessed 27 March 2024]; also, as reported directly to Ofcom by the RSPCA in engagement held in autumn 2023.

³⁹ Social Media Animal Cruelty Coalition, 2021. [Making money from misery](#); South West Grid for Learning (SWGfL), 2024. '[Report Harmful Content sees concerning rise in animal abuse content](#)' [accessed 8 May 2024]; SPCA, 2023. <https://www.scottishspca.org/news/former-gamekeeper-who-filmed-animal-fights-for-tik-tok-sentenced>; <https://www.worldanimalprotection.org/globalassets/pdfs/reports/english/views-that-abuse.pdf>

⁴⁰ On fake rescue videos: Social Media Animal Cruelty Coalition, 2021. [Making money from misery](#); <https://www.worldanimalprotection.org/globalassets/pdfs/reports/english/views-that-abuse.pdf>.

Livestreaming

- 5.50 Livestreaming functionality appears likely to give rise to a risk of animal cruelty content being disseminated. Livestreaming acts of animal cruelty is likely to amount to illegal content in that it is a conspiracy between the viewers and the organisers to commit animal cruelty. Respondents to our November 2023 Consultation noted that they believed livestreaming to be a risk factor, which could potentially include animal fights.⁴¹ Cooking or eating videos are another specific genre of content which may show the unnecessary suffering of animals, albeit with limited evidence for this content being livestreamed.⁴²
- 5.51 While typically ephemeral in nature, the streamer or any of the viewers may screen-cap or record the stream with the intention of posting it later on other channels and encouraging others to engage with the material – this has been shown to be a risk factor for other illegal activities, such as terrorism, and we believe it is reasonable to infer that this could also be true for animal cruelty offences.
- 5.52 Similarly, comment functions on streams is a known risk factor for other illegal activities, such as child grooming and CSAM, where viewers can communicate with those carrying out the illegal activities. Given the potential risk of livestreamed animal cruelty content, it is likely also a risk factor allowing users to conspire to commit cruelty, or to encourage or assist its commission by urging on, or suggesting or requesting specific acts, in real-time.

Direct messaging

- 5.53 Direct messaging is a risk factor for various aspects of animal abuse. People may post in public channels and through that content encourage viewers to follow-up via direct messaging or through messaging services. This builds a network of bad actors who together perpetuate acts of animal cruelty.
- 5.54 The monkey torture network investigated by the BBC was found to have used a polling function within messaging services to brainstorm ideas for acts of cruelty, which were then used to encourage and commission their connections around the world to create this type of content.⁴³

Encrypted messaging

- 5.55 Similarly, encrypted messaging may facilitate bad actors to engage in animal cruelty activities with others, without fear of detection.⁴⁴ For instance, the Social Media Animal Cruelty Coalition has observed that people conspiring to arrange dog fights were using encrypted groups on a social media service.⁴⁵

Commenting on content

⁴¹ For example, consultation responses from [the Scottish SPCA](#) and [the RSPCA](#).

⁴² In one case reported in the media (Business Insider, 2020, '[A YouTuber with over 3 million follower responded to backlash](#)'), a creator of 'mukbang' content (a type of cooking and eating video that can aim to share cultural traditions, but also overlaps with "ASMR" videos) was criticised for posting videos of herself eating live animals. In this case, the videos themselves were *not* livestreamed. However, the genre of 'mukbang' is known to be either pre-recorded or livestreamed, indicating that the latter could be risk factor for the animal cruelty offence.

⁴³ BBC, 2024, [Kidderminster women pleads guilty to role in monkey torture network](#). [accessed 8 May 2024]

⁴⁴ National Wildlife Crime Unit, [Cyber enabled wildlife crime](#). [accessed 9 May 2024].

⁴⁵ Social Media Animal Cruelty Coalition, 2021. [Making money from misery](#), p.21.

- 5.56 Comment functions are a clear risk factor for the animal cruelty offences. As noted above for livestreamed content, users may encourage acts of animal cruelty – either in the moment or for the creation of new content. They may use this functionality to request more content of the same type, thereby implicitly validating and enabling the poster to perform more acts of cruelty and/or share more content depicting these acts.
- 5.57 A recent study into engagement with images of animal abuse on social media services (including comments as well as likes and sharing or replicating the content) found that respondents who appeared to show traits of callousness or dismissiveness towards animals were more likely to engage positively with animal abuse content. This could indicate that comments functionalities could be used by those interested in animal cruelty content to show their approval and encourage more of this activity.⁴⁶
- 5.58 As mentioned briefly above in the section on reposting /sharing as a risk factor, users may engage with content – including through comments – because they do not realise what it is. A characteristic of animal welfare is that it is not always obvious to an onlooker or viewer where an animal is in distress, or the act being performed is causing unnecessary suffering. This is in part because users may not understand animal behaviour, or because the explicit act of cruelty happens off-screen (such as poor animal welfare standards⁴⁷, fuelling wildlife trade and poaching, ‘rescue videos’, illegal pets⁴⁸ and ‘teasing as torture’⁴⁹).
- 5.59 Taking this into account, comments functions may be a risk factor for perpetuating and normalising animal cruelty. Where an online service allows comments on a piece of content, this may mean that some users’ comments appear to be supporting a situation in which the animal is suffering. However, it is unlikely that the majority of commenting users *intend* to encourage that suffering. An analysis of comments on videos showing exotic and endangered animals showed that there is typically a positive overall sentiment toward the content, showing that users do not always understand that these animals should not be kept or treated in the way shown.⁵⁰ While these types of comments would not meet the threshold for illegality, it shows that comments functions could be a contributory risk factor to an offence.
- 5.60 A Born Free USA report provided evidence of videos showing exotic animals in captivity, including one in which the handler repeatedly provokes a python who shows signs of

⁴⁶ McGuirk, L.Ryan and Alleyne, E. 2024 [“Liking,” “Commenting,” and “Reposting”: Psychological factors associated to online animal abuse](#), *Society & Animals*, p.17. Conversely, the study found some correlation between participants who said they would comment to show their disapproval and higher levels of self-esteem (in that these participants felt they were furthering animal welfare causes). Note this study is in pre-print (not yet fully published), and used a non-representative sample through a survey of self-reported attitudes. We therefore use it as an indicator for the potential for commenting on comment to be a factor in encouraging, assisting or facilitating animal cruelty content, rather than as definite evidence that this occurs.

⁴⁷ Social Media Animal Cruelty Coalition, 2023. [The cruelty you don't see: the suffering of pet macaques for social media content.](#)

⁴⁸ Social Media Animal Cruelty Coalition, 2022a. [Wild animal "pets" on social media.](#)

⁴⁹ Social Media Animal Cruelty Coalition, 2022b. [Teasing as Torture.](#) The positive (if apparently short-lived) impact of the 2015 ‘Tickling as Torture’ campaign which aimed to raise public awareness of an act which is not clearly animal cruelty is referenced in Moloney et al. 2021. [‘Is YouTube promoting the exotic pet trade? Analysis of the global public perception of popular YouTube videos featuring threatened exotic animals’](#) [accessed 9 May 2024].

⁵⁰ Moloney et al. 2021. [‘Is YouTube promoting the exotic pet trade? Analysis of the global public perception of popular YouTube videos featuring threatened exotic animals’](#) [accessed 9 May 2024]

distress. The individuals also laugh, and are thus shown to be encouraging this behaviour.⁵¹ As of June 2024, this video is still available, with comments enabled (the Born Free USA report does not refer to or analyse these, however). Where an individual could be reasonably expected to recognise that their actions are cruel, positive comments on their content may nevertheless motivate them to continue performing these acts. A service with comments functions therefore could facilitate the animal cruelty offence.

- 5.61 SMACC has also observed that bad actors can use coded or ambiguous language to evade detection.⁵² This is potentially more an issue within public channels, such as comments sections. They may also be able to share hyperlinks to other material or to other services on which more extreme material is shared.

Transaction and offers

Posting goods and services for sale

- 5.62 The monkey torture ring uncovered by the BBC also involved members of the network were paying for people in other countries to create the content.⁵³ The torture ‘services’ were not necessarily explicitly for sale, but each commissioned video was, in effect, an advert that encouraged further payments for future acts.
- 5.63 While we are not currently aware of evidence to suggest payments or rewards systems on livestreaming services is a particular risk factor, in the case of animal cruelty it is reasonable to assume that this could directly motivate further acts of animal cruelty in real-time, therefore directly facilitating the animal cruelty offence.
- 5.64 Where an online service provides integration to an online shop or marketplaces, or even payment services on an off-platform, this may enable users who are interested in animal cruelty content to conduct transactions easily, while also incentivising the suppliers to encourage sales of existing or future content.⁵⁴ Payment systems, or the ability to share links to external payments system, could therefore contribute to the commissioning and facilitation of animal cruelty.

Recommender systems

Content recommender systems

- 5.65 Bad actors may take advantage of content recommender systems by posting animal cruelty content that may or may not be explicit and hoping it will get wide reach. In particular, even those not actively seeking out or wishing to engage with animal cruelty and wildlife trade content may be recommended it because they have previously watched or sought out

⁵¹ Born Free USA, 2022. [Their lives for your likes: the exploitation of wild animals on social media, p.11](#) [accessed 10 May 2024].

⁵² Social Media Animal Cruelty Coalition, 2021. [Making money from misery](#), p.21.

⁵³ Two UK women charged with encouraging or assisting unnecessary suffering made payments for content via PayPal, as reported in the media: BBC, 2024, [‘Kidderminster woman pleads guilty to role in monkey torture network’](#) and BBC 2024, [‘Monkey torture video accused woman granted bail’](#)

⁵⁴ Social Media Animal Cruelty Coalition, 2021. [Making money from misery](#), p.45. From the context of the wildlife trade, there is some evidence of pages providing options for admins to use shopping feature and allow users to easily send direct messages to sellers (Alliance to Counter Crime Online, 2020. [‘Two clicks away: wildlife sales on Facebook’](#) [accessed 8 May 2024]). While this does not necessarily constitute the animal cruelty offence, it indicates it could be a risk factor for this content.

other animal content.⁵⁵ If a user then views *cruelty* content, they may be shown more similar content.⁵⁶

- 5.66 Content recommender systems can also amplify animal cruelty content even where users react negatively to or comment on it to indicate their concern, anger or disgust at the content, for instance, as the services' automated systems may still consider this to be engagement.⁵⁷

Network recommender systems

- 5.67 Recommendations of other users may be a risk factor for connecting users who may form an online network which encourages, assists or conspires to commit acts of animal cruelty. There is some evidence that – within the context of the wildlife trade, at least – recommendations to pages or groups surface other bad content to those who have engaged with it in other places: during a study to identify the prevalence of wildlife sales, the Alliance to Counter Crime Online found 29% of the pages in their sample through the recommendations.⁵⁸ We believe it is reasonable to presume that this risk factor could also apply in the case of connecting users engaged in animal cruelty activities.

Content exploring factors

User generated content searching

- 5.68 Given that the existence of animal cruelty content online in itself could encourage or represent a conspiracy to commit animal cruelty, the ability of users to *search* for this content within a user-to-user service, or for it to appear in search results (even if not directly searched for) is a risk factor for the animal cruelty offence.
- 5.69 Studies conducted by research bodies and non-profit organisations have shown that animal cruelty content and communities which share it (such as groups or pages), can be easily found on social media and video-sharing services through the search functions within those services. The method used for these studies included collecting data found from key word searches on video-sharing, social media and messaging services.⁵⁹

Risk factors: Business models and commercial profiles

Business model (revenue model and growth strategy)

- 5.70 Online provider's business models often give rise to financial incentives to maximise user engagement. In some cases, online services can be incentivised to recommend content that

⁵⁵ BBC, 2023 [Monkey Haters](#) (documentary) [accessed 27 March 2024].

⁵⁶ The Social Media Animal Cruelty Coalition has told Ofcom that when conducting a specific piece of research on “fake rescue” content, 20% of the 763 pieces of content that they recorded had been recommended to their volunteer researchers' personal accounts as opposed to having been searched for; while it is difficult to assess whether this is widespread amongst other users, it suggests that this could be a risk.

⁵⁷ The Social Media Animal Cruelty Coalition advises users not to engage with animal cruelty content, noting that views and engagement may increase popularity of the view. For example: Social Media Animal Cruelty Coalition, 2021. [Making money from misery](#), p.14.

⁵⁸ Alliance to Counter Crime Online, 2020. [‘Two clicks away: wildlife sales on Facebook’](#) [accessed 8 May 2024]

⁵⁹ Carvalho, A.F., de Moraes, I.O.B., and Souza, T.B. 2023. ‘Profiting from cruelty: digital content creators abuse animals worldwide to incur profit’, *Biological Conservation* 287; Social Media Animal Cruelty Coalition, 2021. [Making money from misery](#), p.16; Social Media Animal Cruelty Coalition, 2023. [The cruelty you don't see: the suffering of pet macaques for social media content](#), p.12.

is illegal or harmful, or to facilitate sharing of such content, if it is engaging for certain communities of users.

- 5.71 There is some evidence that animal cruelty content could drive engagement with some users, as the videos identified by researchers can get thousands or millions of views. A study of over 400 videos which featured activities which may show unnecessary suffering of animals (such as hunting experiments, slaughtering, ‘fake rescues’ and fights) showed that 28% were monetised. While not every category of video was monetised (the researchers did not identify any monetised ‘crushing’ videos from their sample), nor monetised equally, this nevertheless suggests that a variety of animal-related videos – including where they may constitute the animal cruelty offence, can make money for both content creator and online service.⁶⁰
- 5.72 The same study also noted that the content creators producing ‘fake rescue’ videos can ask for donations, indicating that content creators may have incentives to continue misrepresenting their activities to make money.⁶¹

Commercial profile

- 5.73 We are not currently aware of any evidence to suggest that the size or the stage of development of a service is a particular risk factor for the animal cruelty offence.

Evidence of risk factors on search services

- 5.74 We are not aware of evidence relating to the risk of exposure via search services to content that encourages, assists or conspires to commit animal cruelty, or the harm that this could cause users of these services. However, given there is some evidence for this type of content existing online, including in publicly-available spaces on user-to-user services and stored on file-sharing services, it is likely that it will be findable via search.

⁶⁰ Carvalho, A.F., de Moraes, I.O.B., and Souza, T.B. 2023. ‘Profiting from cruelty: digital content creators abuse animals worldwide to incur profit’, *Biological Conservation* 287.

⁶¹ Carvalho, A.F., de Moraes, I.O.B., and Souza, T.B. 2023. ‘Profiting from cruelty: digital content creators abuse animals worldwide to incur profit’, *Biological Conservation* 287, p.3 and p.8.

6. Draft Register of Risks: obscene content showing torture of humans and animals (the s.127(1) offence)

Summary analysis for the offence of obscene content depicting human and animal torture: How harms manifest online, and risk factors

This section considers the evidence of risk factors for the obscene content offence (torture of humans and animals). This can manifest as pre-recorded content (images and video) which can cause significant levels of distress. There are several risk factors which may be associated with the offence, such as the following.

Service type risk factors:

There is some evidence that **social media services**, and to a lesser extent **discussion forums** and **file-sharing and file-storage services** may pose a higher risk of harm connected to this offence, in that they allow users to share content with others, in some cases gaining wide reach, and to engage with the content and other users. Since this content can be publicly available on user-to-user services, it is likely that it can also be discovered through search results on **search services**.

Functionalities and recommender system risk factors:

Any service type which allows the **posting of images or videos**, or the **reposting and forwarding of this content** could be a risk factor for users of online services coming across this content. Similarly, the ability to **share hyperlinks** could mean users risk being exposed to content hosted on other services.

There is some evidence that **content recommendation systems** may play a role in surfacing obscene content online, risking users being harmed despite not actively looking for this type of content.

Business model and commercial profiles risk factors:

It is possible that certain **business models** could be a risk factor for the offence: content creators may be incentivised to post more extreme content, some of which could depict obscene torture of humans or animals, in order to maximise engagement and associated revenues.

Introduction

- 6.1 This section summarises our assessment of the risks of harm to individuals presented by content on U2U and search services that may amount to the s.127(1) offence listed under ‘Relevant offences’ below.
- 6.2 We set out the characteristics of U2U services and, so far as possible, search services, that we consider are liable to increase the risks of harm. ‘Harm’ means physical or psychological harm. We discuss physical and psychological harm as part of our assessment of the risks of harm, and where possible consider the impact of cumulative harm where content of a particular kind is repeatedly encountered by an individual, or where content of a particular kind is encountered in combination with content of a different kind.

Relevant offence

Torture of humans and animals

- 6.3 Section 127(1) of the Communications Act 2003 sets out that it is an offence to send, or cause to be sent, online, a message (or other matter) that is grossly offensive or of an indecent, obscene or menacing character where the sender intended, or recognised, at the time of sending, that it may be taken to be grossly offensive, indecent, obscene, or menacing by a reasonable member of the public.
- 6.4 The s.127(1) offence is a non-priority offence. It has a number of aspects, but we have focused on those aspects of it which are not fully captured by other priority offences (such as Hate, Terrorism and Extreme Pornography), yet give rise to significant public concern. These are depictions of cruelty (in the form of text, images and videos), which are so serious as to be obscene. The offence can be difficult to apply consistently with the right to freedom of expression and providers should therefore have careful regard to our Illegal Content Judgements Guidance.
- 6.5 This offence is important because for pre-recorded content some illegal animal cruelty and human torture content may not necessarily amount to a *priority* offence, such as the animal cruelty offence, under the Act due to the specific wording of the offences themselves. However, we recognise that the content may still pose a significant risk of harm to users of user-to-user and search services.

Content harmful to children

- 6.6 Content which depicts real or realistic serious violence against, or injury of, an animal (real or fictional) is considered priority content that could be harmful to children. The relevant offence, evidence and risks on services was covered in the Children's Register of Risk in [our consultation on our second phase of regulation](#).

How the s.127(1) offence manifests online

- 6.7 There is evidence that content (text, photos and videos) describing or depicting real – or what appears to be real – torture, serious injury or the deliberate killing of a human or animal does appear on user-to-user services, and is likely searchable through search services, leading to a risk of harm to individuals.

- 6.8 In this section we are focusing primarily on pre-recorded obscene animal torture content and any obscene human torture content. As explained elsewhere in this consultation, we think that *livestreamed* content depicting cruelty to animals would be likely to constitute the animal cruelty offence, in that it is a conspiracy between streamers and viewers to encourage and facilitate these acts. We also refer to evidence of pre-recorded content depicting cruelty to animals in the preceding Register of Risks section on the animal cruelty offence, because its publication may amount to use of the platform for the commission of the offence, and may facilitate the commission of further offences.
- 6.9 However, the most serious pre-recorded content depicting animal torture is also very likely to constitute an s.127(1) offence, and pose a risk of harm to users of online services who see it. As regards torture or deliberate serious injury of animals, this is particularly important for search services, which under the Act are not required to consider the risks of their service being used to facilitate or for the commission of the priority animal cruelty offence.
- 6.10 As regards pre-recorded torture or serious injury of humans, the s.127(1) offence is important for both U2U and search services, because such content may not be caught by the priority offences. It is probable that livestreamed content would amount to a priority offence (threatening behaviour likely to cause fear or alarm)⁶² but this is less clear for pre-recorded content.

Risks of harm to users

- 6.11 Ofcom's Online Experiences Tracker (OET) suggests that 76% of people in the UK are highly concerned about animal cruelty content.⁶³ 10% of people we surveyed had seen animal cruelty content in a four-week period,⁶⁴ and of those who said this was their most recent potentially harmful experience, 82% said 'It really bothered me/I found it extremely offensive'.⁶⁵ This is likely in part out of concern for the animals themselves, but also demonstrates the distress that can be caused by viewing such content.
- 6.12 The OET also found that, compared to attitudes about – and experiences of – animal cruelty content, a slightly smaller number of people in the UK (72%) are highly concerned about content depicting or encouraging violence or injury,⁶⁶ but that a similar number of people in the UK (11%) had *seen* this type of content in a four-week period.⁶⁷ A much smaller proportion of respondents compared to the responses about content depicting cruelty to animals (34%) said 'It really bothered me/I found it extremely offensive', and over two fifths (43%) said 'It slightly bothered me/it slightly offended me'.⁶⁸
- 6.13 In addition, those who said they had seen content depicting cruelty to animals most recently were more likely to report or flag the content they had seen than those who said they had seen content depicting or encouraging violence or injury most recently (39% to

⁶² Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.

⁶³ Ofcom, [Online Experiences Tracker](#), 2024. Fieldwork was carried out in a four-week period in January 2024. Note that in our November 2023 Consultation we referred to a previous iteration of this research (Wave 4).

⁶⁴ Ofcom, [Online Experiences Tracker](#), 2024.

⁶⁵ Ofcom, [Online Experiences Tracker](#), 2024.

⁶⁶ Ofcom, [Online Experiences Tracker](#), 2024.

⁶⁷ Ofcom, [Online Experiences Tracker](#), 2024.

⁶⁸ Ofcom, [Online Experiences Tracker](#), 2024. For this question the number of respondents was much smaller than others (55), which may mean this is not fully representative.

26%). Those who said they had seen violence or injury content were more likely to say they didn't take any action in response to seeing this content (45%) compared to those who said they had seen content depicting cruelty to animals (35%).

- 6.14 In other words, the OET survey might be interpreted to suggest that users' experiences of violence and injury content were potentially less intense or emotive than those of content depicting cruelty to animals. However, this may be because users were not as frequently exposed to the very extreme violence or injury content that would be considered obscene content under the s.127(1) offence. Users may also have a higher tolerance for violence content where it involves humans compared to animals; this is potentially evidenced by some recent research into engagement with content depicting cruelty to animals on social media services. Researchers noted that participants were more likely to engage positively with violent human-human content compared to violent human-animal content (albeit not necessarily any content that would constitute an offence).⁶⁹
- 6.15 There is evidence that the impacts of viewing violent content could lead to significant levels of distress, even where it is not extremely obscene. In one study, researchers analysed users' discussions of their reactions to seeing violent content (including torture of humans and animals). They found that alongside emotions such as acute and prolonged shock, fear, sadness and discomfort, users also occasionally reported symptoms of physical illness. Some users sought support, but others displayed indifference or even encouraged people to watch it for the purpose of "enhancing – or displaying – psychological resilience".⁷⁰
- 6.16 While any illegal content inherently has the potential to cause harm to viewers, there may also be a cumulative impact from repeated exposure to illegal content, such as increased levels (or prolonged periods) of distress.

Evidence of risk factors on user-to-user services

Risk factors: service type

- 6.17 There is not a great deal of systematic research into the existence and prevalence of obscene torture content towards animals or humans on user-to-user services. However, a broad range of types of user-to-user services can be used to share this content, particularly social media, messaging and discussion forums or chat rooms.

Social media services

- 6.18 Violent content, such as text describing or videos and images depicting death and serious injury of animals or humans can be found on major social media services, including in publicly available feeds.

⁶⁹ McGuirk, L. Ryan and Alleyne, E. 2024 [“Liking,” “Commenting,” and “Reposting”: Psychological factors associated to online animal abuse](#), *Society & Animals*, p.14, 17. Note this study is in pre-print (not yet fully published), and used a non-representative sample through a survey of self-reported attitudes. It should therefore be interpreted only as a potential indication of the variance in attitudes towards human and animal abuse content.

⁷⁰ Stubbs, J. E., Nicklin, L. L., Wilsdon, L., and Lloyd, J. 2024. Investigating the experience of viewing extreme real-world violence online: Naturalistic evidence from an online discussion forum. *New Media and Society*, 26, 3876-3894.

- 6.19 The Social Media Animal Cruelty Coalition has documented pre-recorded content depicting animal cruelty on social media and video-sharing services,⁷¹ which we have explored in more detail in the preceding section on the animal cruelty offence. There we suggest it may explicitly encourage, assist or facilitate acts of animal cruelty, and therefore could constitute the animal cruelty offence; we also suggest that this type of content could, by normalising this behaviour, inherently encourage further similar acts even without explicitly doing so. However, where it is obscene torture content, it may also be illegal because of the s.127(1) offence.
- 6.20 Human torture content has been noted as present in user communities on a social media service⁷² and appearing in recommended videos and on meme pages.⁷³
- 6.21 The researchers in the study into user *reactions* to seeing violent content, mentioned above, gathered their data from social media communities in which users discuss their experiences (including seeing content showing torture of humans and animals).⁷⁴ These discussion or descriptions of the content in themselves are unlikely to constitute an offence. However, they may increase the risk that a user is exposed to the content through shared links or through them searching for content after being involved in conversations about it.

Messaging services

- 6.22 Messaging services may be being used by extremist groups to share explicitly gory and violent videos: research published by Human Digital identified links to videos were being shared on extremist messaging channels.⁷⁵

Adult services

- 6.23 Adult services may host content showing obscene acts of sexual sadism, including rape or sexual violence. We discuss elsewhere the risk of these services (and messaging services) being used to commit or facilitate the extreme pornography offence.

Discussion forums or chat rooms

- 6.24 Given the existence of websites specifically for the sharing of so-called ‘gore’ and ‘snuff’ image and videos,⁷⁶ it is reasonable to assume that discussion forums or chat rooms are a risk factor for users interested in discussing and sharing this content. Some of this content

⁷¹ Social Media Animal Cruelty Coalition, 2021. [Making money from misery](#). As noted in the previous section, SMACC’s publications are referenced here as an indicator that potential harmful content (including that which could constitute the obscene torture content offence) exists online, not as an indicator of the scale of the issue.

⁷² The Guardian, 2018. [Exploitation of the internet? The morality of watching death online](#). [accessed 21 June 2024]; The Verge, 2019. [Reddit bans r/watchpeople die in the wake of the New Zealand mosque massacres](#). [accessed 21 June 2024].

⁷³ The Washington Post, 2023. [Instagram users are being served gory videos of killing and torture](#). [accessed 21 June 2024].

⁷⁴ Stubbs, J. E., Nicklin, L. L., Wilsdon, L., and Lloyd, J. 2024. Investigating the experience of viewing extreme real-world violence online: Naturalistic evidence from an online discussion forum. *New Media and Society*, 26, 3876-3894.

⁷⁵ Institute for Strategic Dialogue, 2023. [Gore and violent extremism: how extremist groups exploit ‘gore’ sites to view and share terrorist material](#) [accessed 21 June 2024]

⁷⁶ The Human Digital study noted above analysed 10 of these sites, and include screenshots (images have been removed from the screenshots, but video titles are uncensored and may be distressing).

may be shocking or distressing to some individuals without necessarily being s.127(1) content.

File-storage and file-sharing services

- 6.25 We have explored elsewhere the use of file-storage and file-sharing services being a risk factor for terrorist material and CSAM, for example. It is therefore reasonable to presume that they are also used to share specifically s.127(1) content.
- 6.26 The Human Digital study mentioned above characterised ‘gore sites’ with graphic and violent videos as “proxy file sharing services for extremist and terrorist video content.

User base factors

User base size

- 6.27 There is no evidence to indicate that user base size is a specific risk factor for this offence. However, we expect the number of users on a service could play a similar role as that presented in Chapter 6W: Context to understand risk factor dynamics, in the Annex to Volume 2 of our November 2023 Consultation.

User base demographics

- 6.28 There is some limited evidence to suggest that the user base characteristics such as gender could lead to an increased risk of harm to individuals.
- 6.29 Some research has suggested gender differences in the experience of viewing unsolicited, real-world, explicit sexual or violent content on online social media services: those identifying as men were finding it less disturbing and more amusing or exciting than those identifying as women.⁷⁷
- 6.30 A study into the reactions to viewing violent content indicating that where users discussing the content encouraged others to watch this type of content, or to stop expressing distress. There was frequently a gendered component to their comments (implying that to be able to watch such videos was a masculine trait).⁷⁸

Services which allow child users

- 6.31 Research on the impacts of witnessing content that may be considered obscene torture content has often focused on *children*.
- 6.32 The research around exposure to animal cruelty typically comments on it being a risk factor for the child having behavioural problems in future,⁷⁹ or even themselves perpetrating acts

⁷⁷ Nicklin, L. L., Swain, E. and Lloyd, J. 2020. ‘[Reactions to unsolicited violent, and sexual, explicit media content shared over social media: gender differences and links with prior exposure](#)’, *International Journal of Environmental Research and Public Health* 17. Note this was a relatively small-scale, non-representative survey (225 survey participants, of whom three-quarters were women), which did not present many options for respondents to choose from when considering their reaction to content. However, it does suggest gender *may* be a factor. The same study also considered the impact of prior exposure to this type of content.

⁷⁸ Stubbs, J. E., Nicklin, L. L., Wilsdon, L., and Lloyd, J. 2024. [Investigating the experience of viewing extreme real-world violence online: Naturalistic evidence from an online discussion forum](#). *New Media and Society*, 26, 3876-3894.

⁷⁹ McDonald et al 2017. ‘[The role of callous/unemotional traits in mediating the association between animal abuse exposure and behaviour problems among children exposed to intimate partner violence](#)’, *Child Abuse & Neglect* 72, 421-432.

of animal cruelty⁸⁰ or other crimes.⁸¹ This research does not specifically refer to children witnessing animal cruelty online, and in some cases the conclusions are drawn from a small or non-representative sample. Nevertheless, the evidence does suggest that there is potential for harm. Also, given there is evidence that children *are* seeing this type of content online,⁸² it is a reasonable assumption that this is one mechanism by which they are exposed to it and experience harm. They may also be disproportionately affected by it (particularly psychologically), especially where it is extreme cruelty.

- 6.33 It is possible for people online, including children, to access murder and torture content on the dark web;⁸³ some of these individuals may have moved into dark web spaces after having seen similar content on mainstream areas of the internet and are searching for other, extreme content. Although we have not considered specific evidence about the dark web for the purpose of this section, we acknowledge that it will likely play a role in the online dissemination and exposure to obscene torture content.

User networking factors

Services with user connections

- 6.34 Services allowing perpetrators to connect and share content with other users is likely a risk factor – as noted above, social media services can host this type of content, including in publicly-available spaces, or it is a way for extremist groups to connect with other users and share illegal content.

Services where users can form user groups or send group messages

Group messaging

- 6.35 The existence of animal cruelty content being discussed and shared or linked within group messages suggests this is likely to be a risk factor for s.127(1) content.⁸⁴

User communication factors

Services with posting images or videos

- 6.36 The evidence for a range of animal cruelty content, some of which may be obscene torture content, has been explored in the Register of Risks section on the animal cruelty offence.

⁸⁰ Thompson, K. L. and Gullone, E. 2006. '[An investigation into the association between the witnessing of animal abuse and adolescents' behavior toward animals](#)', *Society and Animals* 14, 221-244. Note that this study is very old, but more recent research suggests similar trends and analyses: for example, Wauthier, L. M. and Williams, J. M., 2022, '[Understanding and conceptualizing childhood animal harm: a meta-narrative systematic review](#)', *Anthrozoös* 35, 165-202. This literature review of studies from 2010 until 2020 covers the risk factors for the child as a perpetrator, which includes witnessing animal cruelty itself.

⁸¹ Johnson, S. A. 2018. '[Animal cruelty, pet abuse & violence: the missed dangerous connection](#)' *Forensic Research & Criminology International Journal*.

⁸² RSPCA, 2018. [The RSPCA's Generation Kind](#), p.2, and footnote 2 [accessed 9 May 2024].

⁸³ For instance, it was widely reported that one of the killers of Brianna Ghey, prior to her crime, watched 'real' murders and torture on the dark web: [Brianna Ghey inquest to look into killer's school transfer - BBC News](#); [How torture and murder-obsessed Scarlett Jenkinson and Eddie Ratcliffe meticulously planned Brianna Ghey's brutal killing | The Independent](#).

⁸⁴ BBC, 2023. [Monkey Haters](#) (documentary) [accessed 27 March 2024].

This includes pre-recorded content which has been identified by the Social Media Animal Cruelty Coalition showing gratuitous and prolonged torture.⁸⁵

- 6.37 The Human Digital study into extremist videos took them to ‘gore’ sites which hosted obscene videos. The study notes that of the sites in the sample, none had measures in place to prevent users from seeing the content.⁸⁶

Services with reposting or forwarding of content

- 6.38 The same Human Digital study noted that the sites they viewed allowed users to download videos, allowing for redistribution on other sites or services.

Services with commenting on content

- 6.39 We are not aware of any recent evidence for comments and replies on posted content being a particular risk factor for harm from obscene torture content. Where the content being commented on is itself obscene torture content, the comments may reinforce the harm to individuals through further discussion or by encouraging, or directing users to, other content. In one 2017 study on a specific ‘shock/gore site’ (now defunct), a notable number of users in the comments sections displayed *positive* emotions towards the content and other users, including humour and a sense of community.⁸⁷ This is likely due, in part, to these users predominantly being like-minded individuals having actively sought out this service and its content.

Content exploring factors

Services where users can search for user-generated content

- 6.40 Since human and animal torture content may be available on services with user-generated content, including social media services, it stands to reason that any search functionality within this site could be risk factor for seeing this type of content.

Services with hyperlinks

- 6.41 The Human Digital study referred to above noted that links to the video-sharing service hosting potentially obscene torture content were being shared within a messaging service, in addition to the content from the service being freely-downloading. As with other illegal content which may be shared through hyperlinking to other services or ‘content stores’ (file-sharing services), such as terror content or CSAM, a hyperlinking feature is likely a risk factor for the sharing of obscene human and animal torture content.

Recommender systems

Services with recommender systems

Content recommender systems

- 6.42 Evidence that recommendation systems have played a role in the surfacing of animal cruelty content online – thereby potentially contributing to an online environment in which

⁸⁵ Social Media Animal Cruelty Coalition, 2021. [Making money from misery](#); Social Media Animal Cruelty Coalition, 2022b. [Teasing as Torture](#).

⁸⁶ Institute for Strategic Dialogue, 2023. [Gore and violent extremism: how extremist groups exploit ‘gore’ sites to view and share terrorist material](#) [accessed 21 June 2024].

⁸⁷ Alvarez, M. 2017. ‘[Online spectatorship of death and dying: pleasure, purpose and community in BestGore.com](#)’, *Participations: Journal of Audience and Reception Studies*.

the unnecessary suffering of animals is encouraged – has been explored in the animal cruelty offence section. Some of this animal cruelty content may include obscene animal torture content that would constitute the s.127(1) offence.

- 6.43 There is some, albeit limited, evidence from media reporting that recommender systems are also a contributing factor for content showing violence and torture of humans: users have reportedly been recommended videos in their main social media feeds, within minutes or even seconds of opening the app.⁸⁸

Network recommender systems

- 6.44 While we are not aware of any evidence for network recommender systems being a specific risk factor for the sharing of or exposure to obscene animal or human torture, it is possible that they facilitate user connections between people interested in this type of content, thereby increasing the likelihood of the content being shared to a wider group of users.

Business models and commercial profiles

- 6.45 As noted in the animal cruelty offence section, there is evidence that animal cruelty videos are being monetised, some of which may be obscene torture content. A service and its content creators may be incentivised to increase user engagement with content in order to increase the revenue earned, by posting ever more extreme content, some of which could constitute the obscene content offence being monetised.

Evidence of risk factors on search services

- 6.46 As with user-to-user services, there is little systematic evidence for the existence and prevalence of animal and human torture on search services. However, potentially obscene torture content, or links ostensibly directing users to user-to-user sites with this content (including those for sharing ‘gore’ images and videos) are nonetheless easily discoverable via results from search services. Given there is some evidence for this type of content existing online, including in public spaces on user-to-user services, it stands to reason that it can be accessed through search.
- 6.47 As noted in Volume 2, Chapter 2T, of our [November 2023 Consultation](#), vertical service services (or ‘speciality service engines’, such as price comparison websites and job listing sites) are likely to have a lower risk of harm from illegal content than general or downstream services, because they typically focus on a specific segment of online content. General or downstream services, however, search across the entire clear web, and therefore may present illegal content to users from any user-to-user service where it has been posted.
- 6.48 We have explored elsewhere the use of search services and the relevant risk factors for other illegal content, such as terrorist material and CSAM. It is likely that these are the same or similar for obscene animal or human torture content.

⁸⁸ The Washington Post, 2023. [Instagram users are being served gory videos of killing and torture](#). [accessed 21 June 2024].

7. Service Risk Assessment Guidance and Risk Profiles

Introduction and proposal

- 7.1 In our November 2023 Consultation, we consulted on draft Service Risk Assessment Guidance and Risk Profiles ([Annex 5](#) of the consultation) for U2U services and search services to comply with their safety duties. Each Risk Profile identifies risk factors associated with the priority offences based on the evidence in the Register of Risks.
- 7.2 The draft Risk Profiles sit within our draft Service Risk Assessment Guidance, and services are asked to consult them in Step 1 of our proposed risk assessment methodology. This step is about getting service providers to understand the kinds of illegal content that they need to assess to meet their illegal content risk assessment duty.
- 7.3 Services completing an illegal content risk assessment have a duty to assess each kind of illegal harm separately. The priority illegal content defined by the Act includes many individual offences, and in our November 2023 Consultation draft Service Risk Assessment Guidance, Ofcom grouped these into 15 kinds of illegal harm. However, with the addition of Animal Cruelty, Ofcom proposes to group these offences into **16 kinds of illegal harm as set out in the table below:**

Table 1. Kinds of priority illegal harm


Kinds of priority illegal harm*	
	<ul style="list-style-type: none"> • Terrorism offences • Child Sexual Exploitation and Abuse (CSEA) offences <ul style="list-style-type: none"> ◦ Grooming** ◦ Child Sexual Abuse Material (CSAM) – U2U services should consider image based CSAM and CSAM URLs separately** • Encouraging or assisting suicide (or attempted suicide) or serious self-harm offences[§] • Harassment, stalking threats and abuse offences • Hate offences • Controlling or Coercive Behaviour (CCB) offence • Drugs and psychoactive substances offences • Firearms and other weapons offences • Unlawful immigration and human trafficking offences • Sexual exploitation of adults offences • Extreme pornography offence • Intimate image abuse offences • Proceeds of crime offences • Fraud and Financial services offences • Foreign Interference Offence • Animal Cruelty
<p>* You can find more information about the detail of the corresponding offences (including relevant non-priority offences) in Ofcom’s Illegal Content Judgements Guidance in our November 2023 Consultation.</p>	

Source: Ofcom

- 7.4 We intend to amend all mentions of 15 kinds of illegal harm to 16 kinds of illegal harms and reflect the updated list at all relevant parts of the guidance to support providers in meeting their risk assessment duty including this new offence.
- 7.5 As part of our November 2023 Consultation, we presented a reference list of illegal offences that are covered by the Act (Table 16, Appendix B in [Annex 5](#) of the Consultation). In relation to each offence listed, the offence also includes the priority offences of encouraging, assisting, conspiring to commit, aiding, abetting, counselling, procuring, attempting, or, (in Scotland), inciting or being involved art and part in the commission of that offence. With the addition of Animal Cruelty as a priority offence, we propose an additional row outlining Animal Cruelty's related offences as set out below.

	Column 1: Kind of illegal harm	Column 2: Offences
16.	Animal Cruelty	An offence under section 4(1) of the Animal Welfare Act 2006 (unnecessary suffering of an animal).

- 7.6 As a consequence, services will need to carry out an Illegal Harms Risk Assessment which includes Animal Cruelty.
- 7.7 As noted above, services must take into account the Risk Profiles when conducting their illegal content risk assessments. As a result, the Risk Profiles – tables that set out a list of risk factors and the harms they are associated with – are published as part the Service Risk Assessment Guidance ([Annex 5](#) of the November 2023 Consultation).
- 7.8 Ofcom's Risk Profiles consider the characteristics of a service (including functionalities, user base and business model) that our risk assessment suggests may be relevant to the risk of certain kinds of illegal harm.
- 7.9 In our draft Risk Profiles, we outlined the key risk factors associated with the priority offences. We included tables where the risk factor was outlined and its associated harms, and examples of ways in which the harm may manifest through the risk factor.
- 7.10 The following draft Risk Profiles are an amendment of the U2U Risk Profiles in our November 2023 Consultation. The amendments consist of the inclusion of risk factors associated with Animal Cruelty to U2U services (Table 3). There are no proposed amendments to Search services.
- 7.11 We propose to add animal cruelty in five of the risk factors associated with U2U services (Table 3). The five risk factors are social media services, messaging services, group messaging, services with posting images or videos, and commenting on content.
- 7.12 We propose to include relevant risk factors for animal cruelty in the following form within the U2U Risk Factor/Risk Profile tables (any additions are highlighted in red):

	1b Messaging services	<ul style="list-style-type: none"> Risk factor: Messaging services Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to CSEA (grooming and CSAM**), animal cruelty, controlling or coercive behaviour, drugs and psychoactive substances, unlawful immigration/human trafficking, proceeds of crime, fraud and financial services, and foreign interference offences. <p>Messaging services allow users to protect their privacy. If your service is a messaging service, you should consider how this design may also be used by potential perpetrators to communicate and share illegal content in a setting that is hidden from public view. This can</p>
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		result in more targeted behaviours and can make detection more difficult, particularly on messaging services with <u>encryption</u> (see 5c). Potential perpetrators often seek to move other users from services where they initially connected (see <u>4a</u>) to messaging services.
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- 7.13 Therefore, the following draft of the Risk Profiles is an amendment of the wider draft Illegal Harms Risk Profiles – the amendments consist of the inclusion of risk factors associated with Animal Cruelty. Consistent with our approach in the November 2023 Consultation, it does not include risk factors associated with s.127(1) of the Communications Act 2003 as it is a non-priority offence.

Consultation Questions

Question 3: Do you have any comments on our approach to amending the draft Risk Profiles or our proposed risk factors for animal cruelty?

Question 4: Are the draft Risk Profiles for illegal content sufficiently clear in presenting the relationships between the risk factors and the risk of harm posed by animal cruelty content?

Question 5: Do the draft Risk Profiles for illegal content include the risk factors that are most strongly linked to the risk of harm posed by animal cruelty content?

Risk Profiles

- 7.14 The Register provides a detailed analysis of the risks of harm to individuals we have identified across U2U and search services. It therefore contains our evidence in full and in some cases identifies risk factors in addition to those highlighted in Risk Profiles. The Risk Profiles will be updated as necessary when changes are made to the Register. Further information on the Register is available in [Volume 2](#) (The causes and impacts of online harm) of our November 2023 Consultation.
- 7.15 When consulting the list of risk factors, you should keep in mind:
- We do not include all the characteristics that may lead to a risk of harm. We do not include risk factors from the Register where we have more limited evidence, or where we have drawn parallels based on the similarity between two kinds of illegal harm.
 - Additionally, the description of the risks provided is a high-level summary only. The effect of any risk factors will vary depending on the context, including the combinations of risk factor present, the governance, systems and processes a service has in place, and the motivations and dynamics that may be unique to the kind of illegal harm or the nature of a service itself.⁸⁹
- 7.16 Given this, you should see the Risk Profile as your starting point to understand which kinds of illegal harm are most likely to occur on a service like yours, and which risk factors may play a role.

⁸⁹ For further information on how we see these dynamics play out in our evidence base, see Volume 2, Chapter 6B (Part 1: Introduction to User-to-User services) and Volume 2, Chapter 6T (Part 2: Search services) of our November 2023 Consultation.

U2U Risk Profiles and risk factors

7.17 The draft Ofcom U2U Risk Profiles encompassing Animal Cruelty is presented in Table 3 below. Each row represents a unique risk factor that providers should consider when conducting their risk assessment. Any additions are highlighted in red.

Table . U2U Risk Factors (U2U Risk Profiles)

Specific risk factors		
U2U services with relevant characteristics should take account in their risk assessment.		
1. Service type factors		
<input type="checkbox"/>	1a Social media services	<ul style="list-style-type: none"> Risk factor: Social media services Key kinds of illegal harm*: Your service is likely to have an increased risk of nearly all kinds of illegal harm. <p>Many social media services are designed to maximise engagement between users. If your service is a social media service, you should consider how potential perpetrators may exploit this design for illegal purposes. For example, potential perpetrators may exploit the likelihood of virality to share illegal content with very large groups of people. Social media services can also be used by potential perpetrators of grooming to target young users by sending out many messages. These services are also used in large-scale foreign interference campaigns to spread disinformation.</p> <p>Research shows that social media services can increase the risk of nearly all kinds of illegal harm, except for firearms and other weapons offences where we do not currently have evidence. This may be due to more research on social media services, or greater probability of risk due to the wide range of functionalities and features on many social media services.</p>
<input type="checkbox"/>	1b Messaging services	<ul style="list-style-type: none"> Risk factor: Messaging services Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to CSEA (grooming and CSAM**), animal cruelty, controlling or coercive behaviour, drugs and psychoactive substances, unlawful immigration/human trafficking, proceeds of crime, fraud and financial services, and foreign interference offences. <p>Messaging services allow users to protect their privacy. If your service is a messaging service, you should consider how this design may also be used by potential perpetrators to communicate and share illegal content in a setting that is hidden from public view. This can result in more targeted behaviours and can make detection more difficult, particularly on messaging services with <u>encryption</u> (see 5c). Potential perpetrators often seek to move other users from services where they initially connected (see 4a) to messaging services.</p>
<input type="checkbox"/>	1c Gaming services	<ul style="list-style-type: none"> Risk factor: Gaming services Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to terrorism, CSEA (grooming), hate and harassment/stalking/threats/abuse offences. <p>If your service is a gaming service, you should consider how it may bring potential perpetrators in contact with other users and may create a space where potentially illegal behaviour is normalised. Gaming services can allow hateful content to spread and become sites of 'normalised harassment', where name-calling or insults are part of user interactions. Gaming services can also be created and modified by terrorist organisations as recruitment tools and be used by potential perpetrators of online grooming to approach children.</p>
<input type="checkbox"/>	1d Adult services	<ul style="list-style-type: none"> Risk factor: Adult services Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to CSEA (image-based CSAM), extreme pornography, and intimate image abuse offences. <p>If your service is an adult service, you should consider how your service may be used by potential perpetrators to share illegal content that is sexual in nature. This includes intimate images, child sexual abuse material, and extreme pornography.</p>

<input type="checkbox"/>	1e Discussion forums and chat rooms	<ul style="list-style-type: none"> • Risk factor: Discussion forums and chat rooms • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to CSEA (CSAM**) and encouraging or assisting suicide or serious self-harm offences. <p>If your service is a discussion forum or chat room, you should consider how your service may be used by potential perpetrators to discuss and share illegal content in a setting that is typically visible to the public. For example, our evidence shows that discussion forums and chat room services can act as spaces where suicide or serious self-harm is assisted or encouraged.</p>
<input type="checkbox"/>	1f Marketplace and listing services	<ul style="list-style-type: none"> • Risk factor: Marketplace and listing services • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to terrorism, sexual exploitation of adults, firearms and other weapons and fraud and financial services offences. <p>If your service is a marketplace or listings service, you should consider how your service may be used by potential perpetrators to sell or buy illegal goods or services. They are often used in purchase scams in fraud offences and can also be used to raise funds that are used for potentially illegal purposes such as terrorist activities. The ability to make <u>online payments</u> on online marketplaces or listing services can increase the risk of harm.</p>
<input type="checkbox"/>	1g File-storage and file-sharing services	<ul style="list-style-type: none"> • Risk factor: File-storage or file-sharing services • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to terrorism, CSEA (image-based CSAM) and intimate image abuse offences. <p>If your service is a file-storage or file-sharing service, you should consider how it may be used by potential perpetrators to store and share illegal content. File-sharing services, in particular those that allow users to upload and share images, are used to store CSAM that can be shared through URLs that perpetrators embed on other services. Potential perpetrators can also create folders of non-consensual intimate images on these services that can be downloaded by others.</p>
2. User base factors		
<input type="checkbox"/>	2 Services which allow child users ⁹⁰	<ul style="list-style-type: none"> • Risk factor: Child users (under 18s) • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to CSEA (grooming and CSAM**) offences. <p>If your service has a high proportion of child users or is aimed at children, your service may be used by potential perpetrators to identify and initiate contact with children for the purposes of grooming them. Child users may also upload, post or share self-generated indecent images.⁹¹ These risks can increase for both CSAM and grooming if your service has <u>direct messaging</u> and/or <u>encrypted messaging</u> (see 5b and 5c). Children may also experience different or increased risks across other kinds of illegal harm. See <u>User Base Demographics</u>.</p>
3. User identification factors		
<input type="checkbox"/>	3a Services with user profiles	<p>If your service allows users to create a user profile that displays identifying information that can be viewed by others (e.g. images, usernames, age), we would expect you to take account of the risks that can arise from this. While there is some overlap, our evidence indicates there are broadly two main manifestations of risk arising from user profiles:</p> <ul style="list-style-type: none"> • Risk factor: User profiles • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to CSEA (grooming), harassment/stalking/threats/abuse, drugs and psychoactive substances, unlawful immigration/human trafficking, and sexual exploitation of adults offences. <p>In some cases, potential perpetrators may be able to use the information displayed on a profile to identify and target a specific user or group of users for illegal purposes. This is especially relevant for gendered illegal harms such as harassment/stalking, where the</p>

⁹⁰ Child users refers to under 18s. We recognise there are other ways to indicate presence of children on a service beyond whether a service ‘allows’ children, and will continue to monitor this approach to ensure alignment with our forthcoming work regarding age assurance, children’s safety duties, children’s access assessments and children’s risk assessment. We do not include features of revenue models covered in other risk factors, e.g. the role of recommender systems.

⁹¹ Self-generated indecent images (SGII) refers to indecent images that are shared often consensually between children and can be non-consensually reshared. For further information, see Chapter 6C of the Register of Risks (Child Sexual Exploitation and Abuse) in our November 2023 Consultation.

		<p>information can help potential perpetrators find specific individuals to target (see User Demographics). For CSEA (grooming), user profile information can enable potential perpetrators to identify children to target.</p> <ul style="list-style-type: none"> • Risk factor: Fake user profiles • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to CSEA (grooming), harassment/stalking/threats/abuse, controlling or coercive behaviour, proceeds of crime, fraud and financial services and foreign interference offences. <p>In a different context, users can create fake user profiles that do not accurately reflect the official identity of the account holder. While this can be an important tool for protecting the identity of some users who may be targeted for their views or online activity, particularly marginalised communities, whistle-blowers, and dissenting voices, it also comes with risks. For example, our evidence indicates potential perpetrators may create fake user profiles to impersonate another entity, often with fake images and usernames. This may allow them to impersonate others as part of illegal behaviours such as fraud (impersonation or misrepresentation offences), foreign interference or to monitor, harass or humiliate victims and survivors of controlling or coercive behaviour.</p>
<input type="checkbox"/>	<p>3b Services where users can post or send content anonymously, including without an account⁴³⁴³</p>	<ul style="list-style-type: none"> • Risk factor: Anonymous user profiles⁹² or users without accounts • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to CSEA (CSAM**), encouraging or assisting suicide or serious self-harm, hate and harassment/stalking/threats/abuse offences. <p>Anonymity is an important tool for users to protect themselves from being identified and targeted for their views, particularly for marginalised communities, whistle-blowers and dissenting voices. However, our evidence indicates that in certain contexts, if your service allows users to share content anonymously, risks can increase. The evidence suggests these risks arise from the disinhibition effect, where users are emboldened because they cannot be identified by other users. This increases the likelihood that users will share illegal material, for example CSAM. Anonymity can also increase the risk that users on your service conduct illegal behaviour such as harassment and stalking.</p>
4. User networking factors		
<input type="checkbox"/>	<p>4a Services with user connections</p>	<ul style="list-style-type: none"> • Risk factor: User connections • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to terrorism, CSEA (grooming), harassment/stalking/threats/abuse, controlling or coercive behaviour, drugs and psychoactive substances, fraud and financial services and foreign interference offences. <p>User connections may be used by potential perpetrators to build networks and establish contact with users to target (see 3a). For terrorism and drug offences, user connections can be used by potential perpetrators to connect with thousands of other users to widely share illegal content. Our evidence also suggests that terrorists may exploit these networks to raise funds, in particular if online payments can be made on the service.</p> <p>Potential perpetrators can also use connections to build online networks which can enable them to access other users indirectly; for example to gain visibility of a target's user profile in cyberstalking offences or to serve to add legitimacy to fraudsters and their content. These connections can also be used by online groomers to appear as if they are part of a child's social network (see 1) allowing them to establish contact with child users and begin communicating.</p>
<input type="checkbox"/>	<p>4b Services where users can form user groups or send group messages</p>	<ul style="list-style-type: none"> • Risk factor: User groups • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to CSEA (grooming), encouraging or assisting suicide or serious self-harm, drugs and psychoactive substances and unlawful immigration/human trafficking offences. Given the similarity with group messaging, we would also expect you to consider the key kinds of illegal harm associated with that functionality. <p>User groups can enable potential perpetrators to create communities where illegal content can be shared and where illegal behaviour can be encouraged and normalised. In grooming offences for example, user groups allow potential perpetrators to build networks and share</p>

⁹² We describe 'anonymous user profiles' as a user-to-user service functionality allowing users to create a user profile where their identity is unknown to an extent. This includes instances where a user's identity (an individual's formal or officially recognised identity) is unknown to other users, for example through the use of aliases ('pseudonymity'). It also includes where a user's identity may be unknown to a provider, for example services that do not require users to register by creating an account. Further information on risk factors is available in the Register of Risks Glossary in or November 2023 Consultation.

		<p>how to offend. User groups may also enable potential perpetrators to identify and target vulnerable users on your service, such as children or those experiencing mental health problems (see User Base Demographics).</p> <ul style="list-style-type: none"> • Risk factor: Group messaging • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to terrorism, CSEA (CSAM**), animal cruelty, intimate image abuse, and fraud and financial services offences. Given the similarity with user groups, we would also suggest you consider if any key illegal harms associated with that functionality are relevant to your service. <p>Similarly to user groups, group messaging allows communities of users to post content in a closed setting. Group messaging can also allow potential perpetrators to share illegal content such as CSAM URLs with numerous users at once. It can also allow perpetrators to form a community around a shared idea, such as discuss ideas for, and commissioning acts of animal cruelty. The risk posed by group messaging, and the numerous users that group messages may reach, can be exacerbated when those messages are <u>encrypted</u> (see 5c).</p>
5. User communication factors		
<input type="checkbox"/>	5a Services with livestreaming	<ul style="list-style-type: none"> • Risk factor: Livestreaming • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to terrorism, CSEA (grooming and image-based CSAM), encouraging or assisting suicide or serious self-harm, and harassment/stalking /threats/abuse offences. <p>If your service allows livestreaming, there is an increased risk of multiple offences, in part due to difficulty of moderating content that is shared in real-time. There is a substantial evidence base detailing the role that livestreaming plays in the commission of sexual abuse and exploitation of children. There is also evidence to suggest that <u>comments</u> on livestreams are used to facilitate grooming offences (see 5d). By using <u>screen capturing and recording</u> functionalities, the livestreaming of CSEA can be used to create CSAM. This functionality can also be used to broadcast terror attacks, often on open channels which can similarly be circulated to wider audiences if captured or recorded (see 5e and 5g).</p>
<input type="checkbox"/>	5b Services with direct messaging	<ul style="list-style-type: none"> • Risk factor: Direct messaging • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to CSEA (grooming and CSAM**), hate, harassment/stalking/threats/abuse, controlling or coercive behaviour, intimate image abuse and fraud and financial services offences. <p>There is a strong link between direct messaging and various offences due to the closed nature of these messages. While direct messaging can enable users to protect their privacy, direct messaging can be used to facilitate offences or share illegal content in a way that is not immediately visible to the public. For example, our evidence indicates that the ability to communicate on a regular basis is key to potential perpetrators establishing a grooming relationship with children (see 2, 3a and 4a). The relatively private nature of direct messaging can also be used by potential perpetrators share CSAM or other illegal content such as articles for use in fraud. Others may use it to harass, stalk and threaten users in a targeted way. In addition, you should take account of any additional risks posed by <u>ephemeral direct messages</u>, which can reassure users that there is no permanent record of the content they are sending. This can, for example, increase the risk of users facilitating drug offences, or of children sharing self-generated intimate images. Ephemeral messaging also relates to grooming, as perpetrators may use it to contact children and hide records of the communication.</p>
<input type="checkbox"/>	5c Services with encrypted messaging	<ul style="list-style-type: none"> • Risk factor: Encrypted messaging • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to terrorism, CSEA (grooming and CSAM**), drugs and psychoactive substances, sexual exploitation of adults, foreign interference and fraud and financial services offences. <p>End-to-end encryption guarantees a user's privacy and security of their messages, while at the same time making it more difficult for services to moderate for illegal content being sent on their service. If your service allows encrypted messaging, we would expect you to consider how this functionality can be used by potential perpetrators to avoid monitoring of communications while sharing illegal content such as CSAM or conducting illegal behaviour. For example, our evidence indicates that potential perpetrators of grooming may initially communicate on unencrypted channels and then move <u>child users</u> towards encrypted channels where it is harder to detect offenders' contact with children (see 1b and 2).</p>

<input type="checkbox"/>	<p>5d</p> <p>Services with commenting on content</p>	<ul style="list-style-type: none"> • Risk factor: Commenting on content • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to terrorism, animal cruelty, CSEA (grooming), encouraging or assisting suicide or serious self-harm, hate, and harassment/stalking/threats/abuse offences. <p>Commenting on content can enable potential perpetrators to target users who share content and to amplify or signpost to existing illegal content. For example, potential perpetrators may share comments containing hateful content on a user's post, sometimes with a coordinated group of users, as a means of targeting the user who posted the content.</p> <p>Comments can also be used by potential perpetrators to amplify illegal content. For example, potential perpetrators of terrorism may share comments containing or <u>hyperlinking</u> to terrorist content (see 7b). However, you should also be aware that comments can serve as a means for other users to counter illegal content, for example by providing advice such as warnings about fraud or discouraging suicide or serious self-harm.</p>
<input type="checkbox"/>	<p>5e</p> <p>Services with posting images or videos</p>	<ul style="list-style-type: none"> • Risk factor: Posting images or videos • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to terrorism, CSEA (image-based CSAM), animal cruelty, encouraging or assisting suicide or serious self-harm, controlling or coercive behaviour, drugs and psychoactive substances, extreme pornography and intimate image abuse offences. <p>Posting images or videos can allow potential perpetrators to share illegal content with many users in open channels of communication. Posting images is a key functionality in the commission of image-based offences, including intimate image abuse, extreme pornography and CSAM. In addition, image-based content can also facilitate other kinds of harm; for example, users may be able to post 'memes' that include terrorist content.</p> <p>In addition, you should consider how potential perpetrators can post <u>images or videos that were edited</u> – potentially using functionalities on U2U services. For example, 'deepfakes,' can depict participants in legal pornography as children in image-based CSAM.</p>
<input type="checkbox"/>	<p>5f</p> <p>Services where users can post or send location information</p>	<ul style="list-style-type: none"> • Risk factor: Posting or sending location information • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to harassment/stalking/threats/abuse and controlling or coercive behaviour offences. <p>Posting or sending location information may be used by potential perpetrators to track the whereabouts of survivors and victims. This information may enable potential perpetrators to stalk and harass targets. You should consider how the sharing of a user's location, sometimes inadvertently, can play an important role in controlling or coercive behaviour and stalking / harassment, as perpetrators can use geo-location tracking (for example, attached to status updates) as a means to monitor survivors and victims. While any user can experience these kinds of harm, you should also pay particular attention to <u>User Demographics</u> when considering this risk factor as our evidence indicates that women and girls are disproportionately impacted by the key kinds of illegal harm associated with this functionality.</p>
<input type="checkbox"/>	<p>5g</p> <p>Services with re-posting or forwarding of content</p>	<ul style="list-style-type: none"> • Risk factor: Re-posting or forwarding content • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to encouraging or assisting suicide or serious self-harm, harassment/stalking/threats/abuse, intimate image abuse and foreign interference offences. <p>If your service allows the re-posting or forwarding of content, you should consider how this may allow illegal content to be disseminated to a much larger audience than it was originally shared with, often without the context and information that surrounded the content. For example, in intimate image abuse, the secondary distribution of images can cause non-consensual intimate images to 'go viral' (see 5e). It also becomes more difficult to get images removed when they are repeatedly re-posted on the original service, as well as on others.</p>
6. Transaction and offers factors		
<input type="checkbox"/>	<p>6</p> <p>Services where users can post goods or services for sale</p>	<ul style="list-style-type: none"> • Risk factor: Posting of goods or services for sale • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to drugs and psychoactive substances, firearms and other weapons, sexual exploitation of adults and fraud and financial services offences. <p>Potential perpetrators may try to promote illegal goods or services by posting them for sale using this functionality. Often illegal items such as drugs and firearms are posted for sale using code names. In certain contexts, the ability to post goods or services for sale, such as through user-generated advertisements, also enables potential perpetrators to advertise and broadcast the sexual services of adults in exploitative environments. The risk of harm can be increased if your services also allows users to make <u>online payments</u> directly.</p>

7. Content exploring factors		
<input type="checkbox"/>	7a Services where users can search for user-generated content	<ul style="list-style-type: none"> • Risk factor: User-generated content searching • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to drugs and psychoactive substances, firearms and other weapons, extreme pornography, and fraud and financial services offences. <p>The ability to search for user-generated content within services may allow users to find illegal content and identify users to target on your service. For example, fraudsters may post content relating to the supply of stolen bank details alongside advice on how to use them to commit fraud which can be found by other users through content searching. Often, these posts include combinations of key terms or <u>hashtags</u> to make it easier for users to find this kind of content. Our evidence indicates that search results on U2U services can include illegal content such as scams or extreme pornography, even when users are not actively searching for it.</p>
<input type="checkbox"/>	7b Services with hyperlinks	<ul style="list-style-type: none"> • Risk factor: Hyperlinking • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to terrorism, CSEA (CSAM URLs) and foreign interference offences. <p>You should consider how hyperlinks can be used by potential perpetrators to direct users towards illegal material, including on third-party services. For example, perpetrators use hyperlinks and plain-text URLs linking to share illegal images among themselves on various types of services, giving opportunity to access and download CSAM.</p>
8. Recommender systems		
<input type="checkbox"/>	8 Services with recommender systems	<p>Recommender systems refers to algorithmic systems which, by means of a machine learning model, determine the relative ranking of suggestions made to users. These include systems that suggest either content or other users on the service. Although recommender systems deliver content to users on your service that they may find interesting, they can also lead to a risk of harm.</p> <ul style="list-style-type: none"> • Risk factor: Content recommender systems • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to encouraging or assisting suicide or serious self-harm and hate offences. <p>Content recommenders are used to curate the content that is suggested to users, and there is a risk they inadvertently amplify illegal content to a wide set of users who may otherwise not organically come across this content. Our evidence, for example, indicates that if not properly tested and deployed, content recommendation systems may amplify hateful content if they are optimised for user engagement.</p> <ul style="list-style-type: none"> • Risk factor: Network recommender systems • Key kinds of illegal harm*: Your service is likely to have an increased risk of harm related to CSEA (grooming) offences. <p>Network recommender systems suggest users or groups of other users to connect with. These systems may connect users in ways that increase risks, for example recommending children connect with others, or recommending the children be connected with. This can inadvertently facilitate grooming if appropriate checks are not in place.</p>

General risk factors		
All U2U services should take account in their risk assessment.		
<input type="checkbox"/>	All U2U services	<ul style="list-style-type: none"> • Risk factor: User base demographics <p>The demographics of your user base (including things like users' protected characteristics, media literacy levels, mental health) will influence the risk of harm related to all kinds of illegal harm. Overall, we have found that vulnerable users, and particularly users with multiple protected characteristics, are more likely to experience harm from illegal content and are impacted differently by it. For example, we would expect you to consider:</p> <ul style="list-style-type: none"> • How the gender of users affects your assessment of risk – women and girls are disproportionately impacted by kinds of illegal harm related to CSEA (both grooming and CSAM), cyberstalking/harassment/threats/abuse, controlling or coercive behaviour and intimate image abuse.

		<ul style="list-style-type: none"> How users with other protected characteristics (including age⁹³, race (including ethnicity), sexuality, sexual identity, age, religion, disability) affects your assessment of risk, including the risk of harm to users with multiple protected characteristics. <p>These dynamics are highly complex and context-specific, and evidence is provided in the Register on user base demographics for each kind of illegal harm (see Volume 2, Part 1). This can help you assess this risk factor even if you do not have any service-specific information on the make-up of your user base.</p>
<input type="checkbox"/>	All U2U services	<ul style="list-style-type: none"> Risk factor: Business model (revenue model and growth strategy) Your revenue model may inadvertently increase the risk of different kinds of illegal harm occurring. For example, we would expect you to consider: <ul style="list-style-type: none"> How the design of your service to optimise your revenue may influence risk. For instance, to increase user engagement, service design may encourage engaging content that is illegal such as hate or may minimise ‘friction’ when sharing content in a way that increases the risk of illegal content on your service. How aspects of your revenue model may be misused by potential perpetrators. For instance, potential perpetrators may misuse the opportunity to ‘boost posts’ to promote and amplify fraudulent content. They may also advertise and use ad targeting to reach and lure in potential victims for sexual exploitation or foreign interference, and attract niche or likeminded users through subscriptions, which may create an environment that fosters harmful activity. <p>Related to this, we also expect you to consider how your growth strategy⁹⁴ may influence service design in a way that may increase the risk of some kinds of illegal harm. For instance, minimising friction to grow your user base may result in less effective moderation for some kinds of illegal harm such as extreme pornography.</p>
<input type="checkbox"/>	All U2U services	<ul style="list-style-type: none"> Risk factor: Commercial profile Your commercial profile may increase the risk of different kinds of illegal harm occurring. For example, we would expect you to consider: <ul style="list-style-type: none"> How low capacity or early-stage services may increase the likelihood of different illegal harms as they may have limited technical skills and financial resources to introduce effective risk management. How a fast-growing user base may negatively affect effective risk management, given the increased scale and sophistication of the moderation technologies and processes required to keep track of a fast-growing user base (particularly since the sources of risk can change quickly as the user base develops). <p>Our analysis suggests that potential perpetrators may opt to use these services to post CSAM or terrorist content, for example, because the content is less likely to be identified and action taken.</p>

** Unless otherwise stated, CSAM includes both image-based and URL-based CSAM.

Source: Ofcom analysis

7.18 Since we are not proposing any amendments to the Search Service Risk Profiles with regards to Animal Cruelty, please refer to [Appendix 5](#) of our November 2023 Consultation for more information on the Search Service Risk Profile.

⁹³ We include ‘child users’ as a specific risk factor, however age can also be considered as part of user base demographics. This is because, unlike other demographic factors, there are services that allow child users, and services that do not, and we wanted to draw out the risks associated with this distinction. We recognise there are other ways to indicate presence of children on a service and will continue to monitor this approach to ensure alignment with our forthcoming work regarding age assurance, children’s safety duties, children’s access assessments and children’s risk assessment.

⁹⁴ We describe ‘growth strategy’ as how the service plans to expand its business. For example, through growing revenue and number of users. Further information on risk factors is available in the Register of Risks Glossary in our November 2023 Consultation.

8. Illegal content Codes of Practice

Introduction and proposal

- 8.1 In our November 2023 Consultation, we consulted on draft Codes of Practice for U2U services and search services to comply with their safety duties. Our draft Codes can be found at [Annex 7](#) and [Annex 8](#) of that consultation.
- 8.2 In all our draft Codes, some of the measures we proposed would apply in relation to services which were at risk of particular kinds of harm. We note that we received responses to our November 2023 Consultation on how risk should be linked to the application of measures, which we are still working through. Our proposals in this consultation should not be taken to suggest we have a settled view on this wider issue. We propose that in whatever approach we take, animal cruelty would be considered a ‘kind of illegal harm’ like the other ‘kinds of illegal harm’ on which we have already consulted.
- 8.3 Specifically, we included a table in the definition and interpretation section of the draft Codes (near the very end of the documents), identifying each ‘kind of illegal harm’ and listing the offences which it includes. We said that each of the offences also includes the priority offences of encouraging, assisting, conspiring to commit, aiding, abetting, counselling, procuring, attempting, or, (in Scotland), inciting or being involved ‘art and part’ in the commission of that offence.
- 8.4 We now propose to add animal cruelty to that table in each of the U2U and search services’ Codes, in the following form:

	Kind of illegal harm	Offences
16	Animal cruelty	An offence under section 4(1) of the Animal Welfare Act 2006 (unnecessary suffering of an animal).

- 8.5 The addition secures that the application of the measures in our draft Codes of Practice is linked to risks of all the priority offences that service providers are required by the Online Safety Act to consider. Towards the front of each of our draft Codes is a table entitled “Index of recommended measures and which Code(s) they are in”. The change we are proposing here would be relevant for each of the measures which we proposed.
- 8.6 We do not consider this change likely to have much impact on service providers in practice since we expect that a service at medium or high risk of animal cruelty would almost certainly identify itself as being at medium or high risk of several other kinds of illegal harm.
- 8.7 Nor do we consider that the change has any effect on the impact assessments we have completed for each of our Codes proposals, for our assessment of their cumulative impact, or on the analysis we have set out in relation to the statutory tests we must apply in recommending measures in Codes (including those in Schedule 4 of the Act). See [Volume 4](#) of our November 2023 Consultation.

Consultation Questions

Question 6: Do you agree with our proposals? Please provide the underlying arguments and evidence for your view.

Question 7: Do you consider the guidance to be sufficiently accessible, particularly for services with limited access to legal expertise?

Question 8: What do you think of our assessment of what information is reasonably available and relevant to these illegal content judgements?

9. Illegal Content Judgements Guidance

Introduction

- 9.1 In our November 2023 Consultation, we consulted on our draft guidance under section 193 of the Act, on how service providers should go about making illegal content judgements for the purposes of their duties under the Act relating to illegal content.
- 9.2 In this consultation, we set out draft text which we propose to add to the Illegal Content Judgements Guidance when we issue it in final form. This would cover the following offences:
- the priority offence in section 4(1) of the Animal Welfare Act 2006 (the animal cruelty offence);
 - the priority offences of encouraging, assisting and conspiring to the animal cruelty offence; and
 - [specifically in relation to animal torture and human killings and torture], the non-priority offence in s.127(1) of the Communications Act 2003 (improper use of public electronic communications network).
- 9.3 Our draft guidance considers when services providers may have reasonable grounds to infer that the conduct and state of mind elements of these offences are present. We do not include defences, because we consider that no defences are particularly relevant to these offences.
- 9.4 Our draft guidance also considers what information is reasonably available to services when making these judgements.
- 9.5 The draft guidance sets out the approach to be taken where:
- a) a system or process operated or used by a provider of a service for the purpose of compliance with relevant requirements; or,
 - b) risk assessments required to be carried out by a service;
- involve a judgement by a provider about whether content is illegal content.
- 9.6 It remains open to providers as a commercial matter (and in the exercise of their own right to freedom of expression), to risk assess for, prevent users encountering, limit the dissemination of and take down content that is not or might not be illegal content, so long as they abide by the Act. This guidance is intended to help services identify when compliance with their duties pursuant to the Act requires them to consider content as illegal content, including when the duty to take content down arises.
- 9.7 In what follows, we set out:
- our approach to each offence,
 - our draft guidance on each offence; and
 - draft annexes to the guidance, which cover the key legal information in more detail.

- 9.8 For more information about the Illegal Content Judgements Guidance, key concepts/terms and our approach to wider issues that are not relevant to this consultation, please see [Volume 5](#) and [Annex 10](#) of our November 2023 Consultation.

Encouraging, assisting and conspiring

- 9.9 As set out in Section 3 above, the animal cruelty offence cannot be committed online in the form of content. It is the content itself which must amount to the offence. Content which just depicts an offence being committed is not necessarily illegal content.
- 9.10 However, the Act includes in the priority offences an additional category of offences, referred to in UK law as ‘inchoate offences.’ Inchoate offences happen when someone is involved in another offence in a way which makes them guilty, without actually committing it.
- 9.11 There is considerable overlap between the different inchoate offences. The priority inchoate offences are:
- a) *Conspiring (with one or more others) to commit a priority offence.* A conspiracy is an agreement between two or more people to commit an intended priority offence (or one or more intended offences including a priority offence;
 - b) *Encouraging (someone) to commit a priority offence.* This overlaps with inciting, counselling or procuring the commission of a priority offence;
 - c) *Assisting (someone) to commit a priority offence.* This overlaps with aiding and abetting the commission of a priority offence and, in the case of Scottish law, being involved art and part⁹⁵; and
 - d) *Attempting to commit a priority offence.* We are not aware of any circumstances in which this could take place online, and so we do not talk about it further in this guidance.
- 9.12 The inchoate offences are particularly important to consider in relation to those priority offences which cannot themselves be committed online.
- 9.13 As we explained in the November 2023 Consultation, the elements of these offences need to be considered in relation to a particular person, the ‘defendant’ (usually the user who has done something in relation to the content).
- 9.14 However, reasonable grounds to infer is not a criminal threshold, and there are no criminal implications for the user if their content is judged to be illegal content against this threshold. Service providers are not obliged to report illegal content to law enforcement (except where the content in question is subject to requirements to report CSEA content to the NCA, as set out in section 66 of the Act).

Reasonably available information

- 9.15 In our November 2023 Consultation, we said that we recognise that services may have access to further information beyond what is specified in this guidance. Where such information is relevant to content judgements as set out in this guidance, services should consider this information as appropriate. However, service providers should only process as

⁹⁵ In Scottish law, the term ‘art and part’ is used to denote the equivalent of aiding and abetting an offence.

much personal data as is necessary (having regard to the principle of data minimisation under the UK GDPR).⁹⁶

- 9.16 Responses to our consultation indicated that this was unclear. To clarify:
- a) Nothing in this draft guidance should be taken as preventing services from having regard to information which we have not said is “reasonably available”, where the information is relevant and they consider it is appropriate and lawful to do so.
 - b) Our draft guidance sets out in a grey box in each guidance section the minimum information that we expect service providers to make available to content moderators for the purposes of making the specific illegal content judgements to which it relates, and the circumstances in which moderators need to be able to consider it.

Approach to the Illegal Content Judgements Guidance

- 9.17 The main points we have considered when developing these additions to our draft Illegal Content Judgements Guidance are:
- i) the importance of explaining the term ‘reasonably available information’ and what this means for services in practice;
 - ii) providing guidance to services on how they might infer the state of mind or ‘mental element’ of a the ‘reasonable grounds to infer’ test; and
 - iii) the need to explain the offences in the guidance, and how we propose to approach jurisdictional considerations.
- 9.18 When considering the guidance, we have sought to balance the following factors, in line with section 1 of the Act, our duties under section 3 of the Communications Act 2003 and the requirement to carry out our duties in a way that is compatible with the Human Rights Act 1998:
- a) user protection and safety;
 - b) user rights, including the importance of:
 - i) freedom of expression, and
 - ii) user privacy;
 - c) avoiding disproportionate interference with the activities of law-abiding users of services; and
 - d) proportionality and practicability.
- 9.19 In particular, illegal content judgements made by services as a consequence of the Act may have a significant impact on the rights of individuals and entities to freedom of expression under Article 10 of the European Convention on Human Rights (‘ECHR’) and to privacy under Article 8 of the ECHR.
- a) Any limitation on the right to freedom of expression must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society.
 - b) Any limitation on the right to privacy must be in accordance with the law, pursue a legitimate aim and be necessary in a democratic society.
- 9.20 In order to be ‘necessary’, the restriction must correspond to a pressing social need, and it must be proportionate to the legitimate aim pursued. Both the definition of illegal content

⁹⁶ The ICO. Principle (c): [Data minimisation](#). [Accessed 24 July 2024].

and the requirement for Ofcom to prepare this guidance are set out in the Act and pursue the aims of the prevention of crime, the protection of health and morals, and the protection of the rights of others. Ofcom has had careful regard to these rights in producing this guidance.

- 9.21 Once we have issued the Illegal Content Judgements Guidance, we expect to continue to monitor its effectiveness and proportionality at appropriate intervals in order to keep it up to date.

Section 4(1) of the Animal Welfare Act 2006

Approach to the offence

- 9.22 As explained in Section 3, the animal cruelty offence cannot be committed online in the form of content so cannot give rise to illegal content. While U2U services can be used for the commission of the offence or to facilitate commission of the offence, this is a matter that we deal with in the Register of Risks and the Risk Assessment guidance, because it relates to those duties. We do not consider ‘commission’ or ‘facilitation’ of priority offences in the Illegal Content Judgements Guidance because those things are not part of the definition of illegal content.
- 9.23 In our proposed wording for the Animal Cruelty section of the Illegal Content Judgements Guidance, we have therefore focused on the priority offences of encouraging, assisting and conspiracy to commit animal cruelty.
- 9.24 There are limits to what can be assessed to be illegal content as defined by the Act as a result of these offences. A depiction of animal cruelty may well not amount to priority illegal content, because a depiction alone does not have the characteristics the law requires to say that it is encouraging, assisting or conspiring someone else to commit the offence. Nor is it possible to encourage, assist or conspire to an action which has already taken place when the act of encouraging, assisting or conspiracy is first done. This means that comments applauding pre-recorded depictions of animal cruelty will not necessarily amount to priority illegal content.
- 9.25 By contrast, we consider that livestreams of animal cruelty are likely to amount to a conspiracy between the viewers and organisers of the livestream to commit animal cruelty.
- 9.26 As set out in sections 4 and 5 of this consultation, (our draft Register of Risks), providers of U2U services are required by the Act to consider the risk of their service being used to facilitate the commission of priority offences, or used for the commission of priority offence. Because of this, they would still need to consider the risk of pre-recorded content depicting cruelty to animals in their risk assessments because it represents the use of the service for the commission of the animal cruelty offence, or to facilitate commission of the animal cruelty offence. But under the Act, search services are not required to consider facilitation or commission – they just need to know what is illegal content. U2U services need to be able to identify illegal content as well, because illegal content triggers their takedown duty. It is therefore important for both kinds of service provider to recognise that the most severe pre-recorded content depicting cruelty to animals is likely to be illegal content because of a different offence: the s.127(1) offence. We consider that offence in the next section. In order to make it clear to service providers that such content is illegal

content, we propose to signpost very strongly from the animal cruelty section of our guidance to the s.127(1) section of our guidance.

Which animals and which suffering?

- 9.27 The definition of the kinds of animals caught by the animal cruelty offence is “An animal of a kind commonly domesticated in the British Islands, or an animal under the control of man (whether on a permanent or temporary basis) or an animal not living in a wild state”. We have included this in full in the detailed annex to our proposed guidance, but for the purposes of the main guidance document we consider that content moderators within the UK may find this test too hard to understand. Not even all those based within the UK would find it easy to say what amounts to ‘domestication’, what exactly the ‘British Islands’ are or which animals are commonly domesticated. We have therefore proposed simplifications of the wording and provided a series of examples of types of animal and types of situation we consider would be caught.
- 9.28 We propose to explain that unnecessary suffering may be of a physical or mental nature and may arise from a person’s action or their inaction.

Encouraging, assisting, or conspiracy

- 9.29 It is likely to be challenging for services and their moderators to know, from looking at a piece of content, for instance a comment on a livestream, that it encourages, assists or conspires to the unnecessary suffering of an animal. This means we have to provide guidance on when services and its moderators are likely to be able to infer that a user is encouraging, assisting or conspiring to commit the offence, where possible.
- 9.30 We are consulting on the view that services should infer that a user is encouraging or assisting the offence if:
- i) it appears from the content as if the user is talking about something real, which they expect to happen, proposing that it is more likely to be real if for instance what is described is physically possible or if practical details are given, and;
 - ii) it is clear and obvious that the user is not fantasising or joking, bearing in mind that some users will pretend something is a fantasy or a joke to disguise illegal content.
- 9.31 Similarly, to the guidance set out about encouraging or assisting the offence, we are consulting on the view that when it concerns conspiracy to commit the offence, moderators will need to consider that what the content shows is really an agreement to carry out an act which will cause the unnecessary suffering of an animal. If the content clearly shows an agreement to carry out the offence, services will likely have reasonable grounds to infer it is illegal. Again, services will need to consider that some users pretend something is a fantasy or a joke to disguise illegal content.

Jurisdiction

- 9.32 As set out in the November 2023 Consultation, the Act states that “[f]or the purposes of determining whether content amounts to an offence, *no account is to be taken* of whether or not anything done in relation to the content takes place in any part of the United Kingdom.” The Explanatory Note to the Act explains that the effect of this is that “content does not need to be generated, uploaded or accessed (or have anything else done in relation to it) in any part of the United Kingdom to amount to an offence under this provision. *This is the case regardless of whether the criminal law would require the offence, or any element of it, to take place in the United Kingdom (or a particular part of it)*” (Ofcom’s emphasis).

- 9.33 However, this interpretative rule in the Act applies only to what happens in relation to the content. It does not affect, for example, any offline circumstances required for the offence to be committed.
- 9.34 In the case of the encouraging, assisting and conspiring offences, the animal cruelty offence being encouraged, assisted or conspired to etc would need to be an offence which was somehow within the territorial jurisdiction of the UK courts. However, the precise rules the UK courts apply to determine whether they have jurisdiction over cases are, in our view, too complicated and require too much knowledge of UK laws for there to be any prospect that even a very well resourced service provider would be able to apply them in practice. However, there are many scenarios in which the conduct would not amount to an offence of animal cruelty. We do not think it is possible for us to say it is reasonable for a service provider to infer the conduct to be an offence in every case (though a service may choose to do so, in an exercise of its own right to freedom of expression).
- 9.35 We therefore propose to apply a broad brush approach and to say a service has reasonable ground to infer that the conduct amounts to the offence when there are reasonable grounds to infer that:
- a) the animal cruelty offence concerned is taking place in the UK, or
 - b) is to be committed by someone who is British, or
 - c) is taking place in any other country where animal cruelty is an offence.

We provisionally consider that this approximates the rules a UK court would apply in a way that is understandable for service providers.

State of mind

- 9.36 The offences of encouraging, assisting and conspiracy can only be committed with the right state of mind. For encouraging and assisting, that is intent or belief that an animal cruelty offence will be committed (or that one of a number of offences, of which animal cruelty is one, will be committed). For conspiracy, that is intent that an animal cruelty offence will be committed.
- 9.37 However, a service provider will not be in a position to interview the user concerned about their state of mind. For the conduct element of 'encouragement' and 'assistance' the circumstances must be such that there is a possible offence to be encouraged or assisted, and for conspiracy there must be an agreement of some kind. We consider that once it is reasonable to infer that the conduct of the user is such as to encourage or assist animal cruelty to take place in real life, or that there really is an agreement to commit animal cruelty, it is reasonable based on the same information to infer intent or belief. We therefore do not consider this aspect of state of mind separately in our proposed draft guidance.
- 9.38 However, it is necessary for it to be reasonable to infer that the user concerned either knows or reasonably ought to know that the animal is experiencing physical or mental suffering. This requires us to take a view on what it is reasonable to say a user should know. We are consulting on our view that a service should infer this when any of the following are true:
- a) the conduct being encouraged/assisted/conspired to involves causing any physical pain to the animal, including by any kind of mutilation done for aesthetic effect;

- b) the animal concerned is behaving in a way that that a non-expert would consider clearly indicates distress, defensiveness or aggression. Examples of this would include, but are not limited to hissing, growling, baring teeth, lashing out or aggressively biting; or
- c) the content itself contains a recognition that the conduct will cause suffering to the animal.

- 9.39 We recognise that it may protect animals better from harm if services chose to take action against all content in which a user’s conduct may mean animals are caused unnecessary suffering, even where the person causing it is unaware of that. However, Ofcom only has the powers given to us under the Act. There must be reasonable grounds to make this inference, and we do not consider that it is reasonable to expect that users generally can recognise signs of distress in all types of animal which may be ‘protected animals’ for the purposes of the offence. Service providers are however entitled to choose to protect animals from harm further than the Act requires, in an exercise of their own right to freedom of expression.
- 9.40 Our draft wording of the ICJG for the animal cruelty offence is set out in full lower down in this section.

Section 127(1) of the Communications Act 2003

Approach to the offence

- 9.41 Section 127(1) of the Communications Act 2003 makes it an offence to:
- a) send by means of an electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
 - b) cause any such message or other matter to be so sent.
- 9.42 In order to be guilty of an offence under s.127(1) the defendant must either have intended that the content be grossly offensive or of an indecent, obscene or menacing character, or must be aware that it could be taken to be so by a reasonable member of the public.⁹⁷
- 9.43 As set out in paragraph 3.23, we propose to focus on ‘obscene’ content in our guidance. Content which our proposed guidance does not address, could still be illegal content, but would fall to be considered under Section 14 of our draft Guidance – [Relevant non-priority offences \(‘other’ offences\)](#).
- 9.44 Even when narrowed down as set out above, this offence is vague and there is little case law on it. It has the potential to be applied by service providers in a way which has very significant negative impacts on the right to freedom of expression, because the words used in it are capable of such broad interpretation. We recognise that this is a risk which is likely to be exacerbated by our inclusion of this offence in our guidance even in the narrow way we are proposing.
- 9.45 However, as set out above, if we do not explain in our guidance why pre-recorded ‘real’ torture videos amount to illegal content under the Online Safety Act, we consider there would be a gap in our regulatory products which itself risks allowing serious harm to users to continue. On balance, therefore, we have decided to consult on including in our Illegal Content Judgements Guidance a section on when content is ‘obscene’ under the s.127(1)

⁹⁷ Following DPP v Collins [2006] UKHL 40, DPP v Kingsley Smith [2017] EWHC 359 (Admin).

offence, targeted at this type of content. We therefore propose that service providers should consider the s.127(1) offence when assessing content which:

- a) depicts the apparently real and deliberate infliction of severe physical pain or suffering on an animal or human for no good reason; and
- b) is not capable of amounting to a priority offence set out elsewhere in the Illegal Content Judgements Guidance (including animal cruelty, extreme pornography, child abuse, terrorism).

9.46 In (a) above, we are suggesting that service providers should turn to our guidance on the s.127(1) offence when it depicts infliction of pain or suffering “for no good reason”. We thought about whether, instead of the phrase “for no good reason”, we should tell services to consider this offence when the conduct depicted was “unlawful”. However, we do not consider that guidance like this would be practicable for service providers to apply, since many of them will not be based in the UK and will not know what is and is not unlawful here.

9.47 Our proposed guidance explains that content must be more than just shocking, offensive or disturbing. In order to ensure there can be no doubt that war reporting, crime reporting, political campaigning and drama are not prohibited by this offence, we propose to give these as clear examples of when content is unlikely to be illegal content under this offence.

9.48 Our draft wording of the ICJG for the s.127(1) offence is set out in full lower down in this section.

Draft guidance on the animal cruelty offence

9.49 We are proposing the following text, to be inserted in our draft Illegal Content Judgements Guidance in the section for priority offences. The paragraphs would of course be renumbered accordingly.

Animal Cruelty

Warning: this section contains content that may be upsetting or distressing

Priority offence of causing unnecessary suffering to an animal

- 9.50 Causing the unnecessary suffering of an animal (also known here as ‘animal cruelty’) is a priority offence. This offence is in section 4(1) of the Animal Welfare Act 2006.
- 9.51 A person commits this offence where they know or ought reasonably to know that their conduct would, or would be likely to:
- i) **cause suffering** to an animal; and
 - ii) the animal is a **protected animal**; and
 - iii) the suffering is **unnecessary**.
- 9.52 In practice, this behaviour can only occur offline. It cannot be committed through the posting of online content because, though online content may depict or discuss the suffering of an animal, the animal will not be caused to suffer *by* the posting of online content.
- 9.53 **Where content depicts past instances of animal cruelty, services should consider whether it amounts to a non-priority offence under section 127(1) of the Communications Act;** see our guidance on Torture and extreme cruelty. It is very important that service providers steer content moderators to consider section 127(1), as much of the content which may seem to be animal cruelty content is more appropriately thought about in that way.
- 9.54 Where content **discusses or livestreams** instances of animal cruelty this section may be relevant. It considers the offences of encouraging, assisting and conspiracy as they relate to animal cruelty.

Encouraging, assisting, or conspiracy to cause unnecessary suffering to an animal

- 9.55 **Content should be treated as illegal content where there are reasonable grounds to infer that it amounts to an offence of intentionally encouraging or assisting another person to commit the animal cruelty offence.** In order for content to be illegal, there must be reasonable grounds to infer both the conduct element of the offence (an act of encouraging or assisting the offence), *and* the state of mind element (intent or belief that an animal cruelty offence will be committed).
- 9.56 **Similarly, in the case of conspiracy, services should consider content to amount to illegal content where there are reasonable grounds to infer that it amounts to an intentional agreement between two or more people conspiring to commit an offence.** The users involved must intend to participate in an agreement and intend that the animal cruelty offence be committed.
- 9.57 Whether the conduct is encouragement, assistance or conspiracy, it is not necessary to infer that an instance of actual animal cruelty took place.

Which animals and what suffering?

- 9.58 Animals covered by the offence are referred to as ‘protected animals’ and generally include a species of animal that is not living independently in the wild. A ‘protected’ animal is an

animal of a type commonly kept by humans in the UK (though the specific animal in question need not be in the UK). Examples are pets, such as cats, dogs, small animals (i.e. hamsters, rabbits, mice, indoor birds, fish, reptiles etc); or livestock (i.e. cattle, horses, sheep, pigs, chickens/ cockerels etc). A 'protected' animal is also an animal which is not commonly kept, but which is under the control of a person on a permanent basis and not living in a wild state – an animal held in a room or cage, or being controlled by a human, no longer in a wild state, should almost always be considered a protected animal (i.e. animals kept in zoos, wildlife parks, or circuses). This is also the case where an animal is being bought or sold.

- 9.59 A 'protected animal' also includes these types of animals when they were formerly under the control of a person – for example, stray cats, feral dogs, and escaped zoo animals.
- 9.60 Unnecessary suffering may be of a physical or mental nature. The suffering in question may arise from a person's action or their inaction.

Encouraging, assisting, or conspiracy

- 9.61 For content to be considered illegal, the conduct only needs to be 'capable' of encouraging or assisting. In the context of animal cruelty online, encouraging could include words urging another person to carry out animal cruelty. Assisting could include providing information on how to obtain animals to abuse.
- 9.62 In either case, the content moderator considering the content will need to decide whether it appears from the content as if the user is talking about something real, which they expect to happen, or if it is clear and obvious that the user is fantasising or joking, being aware that some users online may pretend something is a fantasy or joke to disguise illegal content. If it appears from the content as if the user is talking about something real, the content can likely be considered to be illegal. It is more likely to be real if what is described is physically possible, if practical details are given, if the comments accompany a livestream or if the users appear to be taking steps to avoid detection.
- 9.63 Conspiracy is where at least two people agree to carry out a criminal offence. It may be communicated verbally or in writing, or it may be implicit. In the context of animal cruelty, content may amount to an offence where posts (for example, messages) between two or more users indicate that they are planning to cause unnecessary suffering to a protected animal. Similarly to encouraging and assisting, the moderator will need to consider whether what the content shows is really an agreement to do this.
- 9.64 An agreement may be made in words, or by conduct. An event showing cruelty to animals which is livestreamed to users is likely to amount to illegal content in that it is likely to amount to a conspiracy between them all to commit animal cruelty.
- 9.65 In order for content to be illegal in this context, the real world animal cruelty being encouraged, assisted or conspired to would need to be sufficiently linked to the UK – the question is whether the UK would prosecute the people involved. The rules which decide whether or not there is a sufficient link are very complicated and content moderators cannot be expected to understand them in detail. However, for the purposes of this guidance, content should be considered illegal if either:
- a) the animal cruelty offence concerned is taking place in the UK, or
 - b) the animal cruelty offence is to be committed by someone who is British, or
 - c) the animal cruelty is taking place in any other country where animal cruelty is an offence.

- 9.66 Services should consider the content to determine this. However, if the user concerned appears on the face of the content to be conspiring to carry out animal cruelty which they will commit themselves, and the content itself does not provide full information on the location of the cruelty, services should also consider the IP address of the posting user and any information in their 'bio' or profile description.
- 9.67 It is also necessary that the animal cruelty concerned not already be in the past when the encouragement, assistance or conspiracy takes place. For example, if a user reacts positively to content which depicts cruelty, they will not necessarily be encouraging, assisting or conspiring to that act of cruelty because it will have already happened before the user did anything. It is possible for a user to react to a first offence of animal cruelty, by encouraging, assisting or conspiring to a later offence, but it must be reasonable to infer that the state of mind needed for the later offence exists. For example, without more evidence, it is not reasonable to infer that a user who 'likes' a depiction of animal cruelty intends or believes that their conduct will lead to further animal cruelty being committed. However, it would be reasonable to infer that the user intended or believed that an animal cruelty offence would be encouraged if the content said "if you like this video, we will hurt more animals".

"Knows, or ought to know"

- 9.68 Once the conduct element is made out, intent should be inferred from that if it is reasonable to infer that the user knows, or ought to know, that the animal will experience suffering.
- It is reasonable to infer that the user knows, or ought to know, that the animal will experience suffering, if the conduct being encouraged/assisted/conspired to involves causing any physical pain to the animal, including by any kind of mutilation done for aesthetic effect;
 - the animal concerned is behaving in a way that a non-expert would consider clearly indicates distress, defensiveness or aggression. Examples of this would include, but are not limited to hissing, growling, baring teeth, lashing out or aggressively biting; or
 - the content itself contains a recognition that the conduct will cause suffering to the animal.

Reasonably available information for user to user services

- The content suspected to be illegal content. For conspiracy, if the content is a message from one user to another, moderators are likely to need to look at the messages immediately before and after it from that other user (because a conspiracy involves more than one person).
- Where the location of the cruelty is not evident from the content itself, but the user concerned appears to be conspiring to carry out animal cruelty which they will commit themselves, services should also consider the IP address of the posting user and any information in their 'bio' or profile description.
- Where it is unclear from the content itself whether or not it is illegal content, any information contained in the free text box of a complaint form in relation to the content.

Reasonably available information for search services

- The content suspected to be illegal content.
- Where it is unclear from the content itself whether or not it is illegal content, any information contained in the free text box of a complaint form in relation to the content.

Usage examples

- Content which gives instructions or advice on how to carry out actions, such as a person posting content instructing another person to torture a cow in the UK.
- Messages in which two or more people post content arranging a dog fight to take place in the UK.

References

Legal annex: [We will insert a cross reference to the 'Annex to guidance' set out below]

Statute: Section 4(1) of the Animal Welfare Act 2006

Children's Harms Guidance: [We will insert a cross reference to the Children's Harms Guidance once final]

Annex to guidance

9.69 We are proposing the following table, to be inserted in the Annex to our draft Illegal Content Judgements Guidance and renumbered accordingly.

Conduct (actus reus)	State of mind (mens rea)	Defences
1. Animal cruelty – s. 4(1) Animal Welfare Act 2006		
<p>(1) P commits an offence if –</p> <p>(a) he acts or fails to act, causing an animal to suffer,</p> <p>(b) he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so,</p> <p>(c) the animal is a protected animal, and</p> <p>(d) the suffering is unnecessary.</p>	<p>P knows or ought reasonably to have known, that the acts, or failures to act, would cause or likely to cause an animal to suffer, and that suffering was unnecessary.</p>	<p>No statutory defence.</p>
<p><i>Definitions and interpretation:</i></p> <p>Animal: means animals which are vertebrate other than man (s.1 Animal Welfare Act).</p> <p>Protected animal: An animal of a kind commonly domesticated in the British Islands, or an animal under the control of man (whether on a permanent or temporary basis) or an animal not living in a wild state.</p> <p>Suffering: means physical or mental suffering (s.62(1) of the Animal Welfare Act 2006).</p> <p>Unnecessary suffering: Considerations focus on the necessity, proportionality, humaneness, and competence of the conduct. (s.4(3) Animal Welfare Act 2006)</p> <p><i>Further note:</i></p> <p>A general exemption may apply, under s.4(3) of the Animal Welfare Act 2006, where P's act or omission resulting in suffering being caused:</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(a) could not have been avoided or reduced;</p> <p>(b) was in compliance with any relevant law;</p> <p>(c) was for a legitimate purpose;</p> <p>(d) was proportionate to the purpose of the conduct concerned;</p> <p>(e) was conducted, in all the circumstances, by a reasonably competent and human person.</p>		

Draft guidance on the s.127(1) offence

- 9.70 We are proposing the following text, to be inserted in our draft Illegal Content Judgements Guidance in the section for non-priority offences. The paragraphs would of course be renumbered accordingly.

Torture and extreme cruelty (as a non-priority offence)

Warning: this section contains content that may be upsetting or distressing

- 9.71 Due to the offline nature of the related criminal offences, online content depicting the torture of humans and/or animals is not necessarily captured by any of the priority offences set out elsewhere in the Illegal Content Judgements Guidance. However, where this content meets the definition of illegal content for the purposes of the Online Safety Act 2023, it has significant potential to cause harm. We therefore consider it important to cover it in this guidance.
- 9.72 Services should therefore have regard to this section when considering content which:
- depicts the apparently real and deliberate infliction of severe physical pain or suffering on an animal or human for no good reason; and
 - is not capable of amounting to a priority offence set out elsewhere in the Illegal Content Judgements Guidance, (including extreme pornography, child abuse, terrorism).
- 9.73 The fact that content meets this definition is *not* reasonable grounds to infer that the content is illegal content. Where content meets the criteria in 9.69, services should follow this guidance.
- 9.74 Section 127(1) of the Communications Act 2003 created the offence of ‘Improper use of a public electronic communications network’. This is a non-priority offence under the Online Safety Act 2023.
- 9.75 The effect of section 127(1) is that it is an offence to send, or cause to be sent, online, a message (or other matter) that is grossly offensive or of an indecent, obscene or menacing character where the sender intended, or recognised, at the time of sending, that it may be taken to be grossly offensive, indecent, obscene, or menacing by a reasonable member of the public.
- 9.76 Many of the types of online conduct which have previously been found to amount to an offence under section 127(1) are likely to constitute one of the alternative offences set out in the Illegal Content Judgements Guidance. There will be a very significant risk of over takedown if moderators who are not experts in UK criminal law seek to apply the section 127 offence to such content. In particular, the phrases “grossly offensive”, “obscene” and “indecent” when used in this offence *do not* capture all content which is upsetting, abusive or sexually explicit.
- 9.77 In drafting this section we have had particular regard to users’ rights to freedom of expression, and the requirement to restrict those rights only when it is necessary and proportionate. We recognise that Article 10 of the European Convention on Human Rights expressly protects speech that offends, shocks, and disturbs. This section is therefore not

concerned with content which is simply offensive, shocking or disturbing, but that which is very clearly beyond the pale of what is tolerable in society by reference to contemporary standards. Due to the risks to freedom of expression, we limit this detailed guidance to content which is obscene, in the sense of being atrocious or horrific. Content which is not obscene in this sense should be considered in accordance with *[Section 14 of this Guidance – Relevant non-priority offences ('other' offences)]*.⁹⁸

User's conduct

- 9.78 All online communications are potentially caught by this offence, including those on social media platforms and messaging apps.

What is 'obscene'?

- 9.79 'Obscene' is not defined in legislation. The law says that whether something amounts to this offence "is to be determined by reference to the standards of an open and just multiracial society". The word obscene here should not be taken to mean 'sexual' or 'pornographic'. It should be taken to mean something atrocious and horrific in terms of the pain and suffering depicted.
- 9.80 Providers should consider relevant contextual factors (within the content) when determining whether content is obscene under this meaning. For example, content which is upsetting or distasteful is not necessarily obscene. Similarly, content which could be deemed satirical or as 'banter' or humour, even if it is distasteful to some or painful to those subjected to it, will not necessarily be obscene.
- 9.81 As set out above, the content in question must be more than offensive, shocking or disturbing before it is considered illegal content within this section. This is a high threshold. However, it is likely to be reasonable to infer that content is obscene where it graphically depicts what appears to be the real:
- deliberate killing or serious injury of humans or animals for no good reason (*except* where such killing or serious injury is otherwise lawful, for example in war or food production); or
 - torture of humans and/or animals.
- 9.82 Providers should note, when considering whether content is obscene under this section, that the consent of a person upon whom severe pain or suffering is inflicted is not a relevant consideration where the content is otherwise obscene.
- 9.83 However, due to the importance of freedom of expression, where the depiction has a clear political or teaching objective, it is very unlikely that it is illegal content under this offence.
- 9.84 For example, it will **not** usually be reasonable to infer that content is obscene where it depicts:
- War reporting;

⁹⁸ The cross reference here would be to the section of our Guidance on which we are consulting at pages 140-141 of Annex 10 of the November 2023 Consultation.

- An apparently real instance of potential misconduct by a person in a position of authority (for example, police brutality, misconduct by an elected official or war crimes);
- Fictional infliction of severe pain or suffering e.g. scenes from films or TV programmes;
- Legal bodily modification e.g., tattooing or piercing;
- Medical or veterinary procedures carried out by a professional; or
- Typical food production.

State of mind

- 9.85 Having determined that content is obscene, it will be necessary for providers to assess whether there are reasonable grounds to infer that the user posting or sharing the content intended that the content was obscene, or was aware that it could be taken to be so by a reasonable member of the public. It is likely to be reasonable to infer such intent or awareness where the content is so graphic and gratuitously violent that it is obvious that a reasonable person looking at it would find it obscene. It is also likely to be reasonable to infer such intent or awareness where the user includes language in their post suggesting that they are aware that reasonable people would find the sharing of the content to be unacceptable in any circumstances.
- 9.86 In the context of content graphically and realistically depicting what appears to be the deliberate killing, serious injury or torture of a human or animal for no good reason, it is likely to be reasonable to infer that a user is aware that this content might be found obscene by some potential viewers. Therefore, where providers identify such content, it is likely to be reasonable to judge that the content is illegal.

Reasonably available information for user to user and search services

- The content suspected to be illegal content.

Usage examples

- Content which realistically depicts burying an animal alive.

References

Legal annex: [We will insert a cross reference to the 'Annex to guidance' set out below]

Statute: Section 127(1) Communications Act 2003

Children's Harms Guidance: [We will insert a cross reference to the Children's Harms Guidance once final]

Annex to guidance

9.87 We are proposing the following table, to be inserted in the Annex to our draft Illegal Content Judgements Guidance and renumbered accordingly.

Conduct (actus reus)	State of mind (mens rea)	Defences
140. Improper use of public electronic communications network – s127(1) Communications Act 2003		
P sends, or causes to be sent, by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character.	P intended that the message was grossly offensive, indecent, obscene or menacing or was aware of, or recognised the risk, at the time of sending the message, that it may be taken to be so by a reasonable member of the public.	No statutory defences.
<p><i>Definitions and interpretation:</i></p> <p>Public electronic communications network means an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public (s151(1) Communications Act 2003)</p> <p>Message includes messages on social media platforms which are communicated and are accessible via the internet– Chambers v DPP [2012] EWHC 2157 (Admin)</p> <p>Grossly offensive means couched in such terms liable to cause gross offence to reasonable persons, judged by the standards of an open and just multiracial society (DPP v Smith [2017] EWHC 359). However, care is required not to criminalise speech which is no more than contemptible as it is not the task of the [criminal] law to censor offensive utterances. (R.(Karsten) v Crown Court at Wood Green [2014] EWHC 2900 (Admin). A message which is in bad taste, even shockingly bad taste, is not enough (Bussetti v DPP [2021] EWHC 2140 (Admin).</p> <p>Menacing means ‘creating fear or apprehension in those to whom it is communicated, or who may reasonably be expected to see it (Chambers v DPP [2012] EWHC 2157). A message intended to be a joke was not of such character.</p>		

A1. Responding to this consultation

How to respond

A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on Friday 13 September.

A1.2 You can download a [response form](#) from. You can return this by email or post to the address provided in the response form.

If your response is a large file, or has supporting charts, tables or other data, please email it to lhconsultation@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet.

A1.3 Responses may alternatively be posted to the address below, marked with the title of the consultation:

A1.4 Ofcom Online Safety Team

Ofcom

Riverside House

2A Southwark Bridge Road

London SE1 9HA

We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:

A1.5 send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files; or upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.

A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential).

A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt of a response submitted to us by email.

A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.

A1.9

A1.10 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4 It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

- A1.11 If you want to discuss the issues and questions raised in this consultation, please email lhconsultation@ofcom.org.uk.

Confidentiality

- A1.12 Consultations are more effective if we publish the responses before the consultation period closes. This can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish responses on the Ofcom website at regular intervals during and after the consultation period.
- A1.13 If you think your response should be kept confidential, please specify which part(s) this applies to and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.14 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.15 To fulfil our pre-disclosure duty, we may share a copy of your response with the relevant government department before we publish it on our website.
- A1.16 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our Terms of Use.

Next steps

- A1.17 Following this consultation period, Ofcom plans to publish a statement in December 2024.
- A1.18 If you wish, you can register to receive email updates alerting you to new Ofcom publications.

Ofcom's consultation processes

- A1.19 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.20 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.21 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary

Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A2. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with an overview of no more than two pages. We will try to make it as easy as possible for people to give us a written response.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish the responses on our website at regular intervals during and after the consultation period. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation coversheet

Basic details

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

Confidentiality

Please tick below what part of your response you consider is confidential, giving your reasons why

- | | |
|----------------------------------|--------------------------|
| > Nothing | <input type="checkbox"/> |
| > Name/contact details/job title | <input type="checkbox"/> |
| > Whole response | <input type="checkbox"/> |
| > Organisation | <input type="checkbox"/> |
| > Part of the response | <input type="checkbox"/> |

If you selected 'Part of the response', please specify which parts:

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

Yes ☐ No ☐

Declaration

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom aims to publish responses at regular intervals during and after the consultation period. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A4. Consultation questions

A4.1 We welcome views and evidence on the questions below. It is not necessary to answer every question – please answer those on which you have a view.

Ofcom's Register of Risks

Question 1: Do you have any comments on Ofcom's assessment of the causes and impacts of online harms? Do you think we have missed anything important in our analysis? Please provide evidence to support your answer.

Question 2: Do you have any views about our interpretation of the links between risk factors and different kinds of illegal harm? Please provide evidence to support your answer.

Service's Risk Assessment

Question 3: Do you have any comments on our approach to amending the draft Risk Profiles or our proposed risk factors for animal cruelty?

Question 4: Are the draft Risk Profiles for illegal content sufficiently clear in presenting the relationships between the risk factors and the risk of harm posed by animal cruelty content?

Question 5: Do the draft Risk Profiles for illegal content include the risk factors that are most strongly linked to the risk of harm posed by animal cruelty content?

The Illegal Content Judgements Guidance (ICJG)

Question 6: Do you agree with our proposals? Please provide the underlying arguments and evidence that inform your view.

Question 7: Do you consider the guidance to be sufficiently accessible, particularly for providers with limited access to legal expertise?

Question 8: What do you think of our assessment of what information is reasonably available and relevant to these illegal content judgements?

A5. Impact assessments

A5.1 This annex outlines our Equality Impact Assessment and Welsh language assessment.

Equality impact assessment

- A5.2 We have given careful consideration as to whether the proposals in this consultation will have a particular impact on persons sharing protected characteristics (including race, age, disability, sex, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership and religion or belief in the UK and also dependents, and political opinion in Northern Ireland), and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations. This assessment helps us to comply with our duties under the Equality Act 2010 and the Northern Ireland Act 1998.
- A5.3 To the extent that any groups with protected characteristics are more likely to be exposed to content depicting animal cruelty content or to content showing human torture, we consider that our proposals would have a positive impact on those groups. Otherwise, we did not identify any particular impacts on any protected characteristics.

Welsh language

- A5.4 The Welsh language has official status in Wales. To give effect to this, certain public bodies, including Ofcom, are required to comply with Welsh language standards.⁹⁹ Accordingly, we have considered:
- the potential impact of our policy proposals on opportunities for persons to use the Welsh language;
 - the potential impact of our policy proposals on treating the Welsh language no less favourably than the English language; and
 - how our proposals could be formulated so as to have, or increase, a positive impact; or not to have adverse effects or to decrease any adverse effects.
- A5.5 Ofcom's powers and duties in relation to online safety regulation are set out in the Online Safety Act 2023 and must be exercised in accordance with our general duties under section 3 of the Communications Act 2003. The proposals in this consultation are linked to those in our November 2023 Consultation. When formulating our proposals in that, where relevant and to the extent we have discretion to do so in the exercise of our functions, we considered the potential impacts on opportunities to use the Welsh language and treating the Welsh language no less favourably than English. We do not think that anything in this consultation affects that analysis.

⁹⁹ The [Welsh language standards](#) with which Ofcom is required to comply are available on our website.

A6. Our proposed approach to s.127(1) offence and stakeholder comments

Responses to the November 2023 Consultation

- A6.1 Ofcom did not discuss s.127(1) or the non-priority parts of the OPA offence in our November 2023 Consultation.
- A6.2 Responses to our November 2023 Consultation however asked that Ofcom provide guidance on s.127(1). One stakeholder suggested that because the Act does not contain an exhaustive list of criminal offences that can happen online, it might be helpful to providers for Ofcom to provide guidance on this offence.¹⁰⁰ A separate stakeholder noted this offence, alongside the OPA offence and the Malicious Communications Act 1988, would capture content falling outside of the priority offences set out in the Act, like for instance that which relates to the racist abuse of footballers, videos of executions and abuse related to tragedies.¹⁰¹ Another stakeholder argued that when it concerns cyberflashing, the guidance should be expanded to include s.127(1), arguing the state of mind element threshold is lower than Section 66A of the Sexual Offences Act 2003 (Sending photographs or films of genitals) on which Ofcom provided guidance in the November 2023 Consultation.¹⁰²
- A6.3 In relation to the OPA offence, one stakeholder argued that it would capture content falling outside of the priority offences set out in the Act.¹⁰³ Another stakeholder stated that the OPA offence satisfies the criteria to be a non-priority offence. The response referred to a briefing which recommended that the OPA offence be added as a priority offence to the Act to tackle what is referred to as obscene pornography content depicting bestiality, ‘incest porn’, serious bodily injury, choking, suffocation and strangulation.^{104 105}

Our approach to the s.127(1) offence

We propose to focus on ‘obscene’ content

- A6.4 As set out in Section 3. we propose to focus on the ‘obscene’ element of the offence with an emphasis on the types of ‘real’ torture content which appear to us to be the most significant gap in the priority offences. We consider that this approach would sufficiently capture content depicting animal and human torture, serious bodily injury and videos of executions.

¹⁰⁰ [Stakeholder name confidential].

¹⁰¹ Online Safety Act Network’s response to 2023 Protecting people from illegal harms online consultation.

¹⁰² [Stakeholder name confidential].

¹⁰³ Online Safety Act Network’s response to 2023 Protecting people from illegal harms online consultation.

¹⁰⁴ [Stakeholder name confidential].

¹⁰⁵ McGlynn, C., and Woods, L. 2022. [Pornography and the Online Safety Bill](#) [accessed 26 June 2024].

We do not propose to focus on other aspects of the s.127(1) offence, which overlap with priority offences

- A6.5 The online safety regime requires providers to have ‘proportionate’ systems and processes to comply with the safety duty. We do not consider it proportionate at this early stage in the establishment of the regulatory regime for us to say that service providers should build their systems and processes so as to enable them to consider all potentially relevant non-priority offences as well as priority offences, where a priority offence already exists targeting the type of content concerned. Parliament chose to define certain offences as priorities.
- A6.6 In particular, we do not think that we should include non-priority offences in our regulatory products where there is not a clear gap.
- A6.7 In addition, we think the risks to freedom of expression if we give specific guidance on too many aspects of the s.127(1) offence to be very high even with our guidance, because the terms used in it are too broad and so have a high risk of being misunderstood by those who are not experts in UK laws. We therefore do not propose to give guidance on the ‘grossly offensive’, ‘menacing’ or ‘indecent’ elements of the s.127(1) offence.
- A6.8 This means that, notwithstanding the responses to our November 2023 Consultation set out above, we are not proposing to cover all the harms they identify as a part of our detailed treatment of the s.127(1) offence. This is not to say that these harms cannot give rise to illegal content. It means that service providers’ risk assessments would focus on the matters set out in our Register of Risks. And it means that a service provider’s content moderation function, (assuming the service was seeking to make illegal content judgements rather than applying its own stricter terms and conditions) would handle such content in the way we have set out more generally. If the content did not amount to priority illegal content, service providers would need to respond appropriately to information given to them by law enforcement or through a court order regarding content that has been implicated in a successful conviction of a non-priority offence. Where a reasoned case that the content was illegal was given to them by a law enforcement body, they would need to take legal advice as appropriate. (See paragraphs A.14.3 to A14.6 of our draft Illegal Content Judgements Guidance in Annex 10 of our November 2023 Consultation.
- A6.9 We accept that some forms of the racist abuse of footballers could be captured by the ‘grossly offensive’ element s.127(1) offence. However, such content will also be captured by the priority offences that relate to abuse, including the offences relating to stirring up racial hatred. Providers must already establish risk management and systems and processes in order to deal with 22 priority offences that are to do with threats, abuse, harassment and hatred, as well as how they may be facilitated and how the linked offences of encouraging, assisting and conspiring to the priority offences may be committed. It is not proportionate or necessary to add more by way of a non-priority offence.
- A6.10 Bestiality is captured by the extreme pornography priority offence.
- A6.11 Attempting to provide guidance on content which depicts abuse relating to tragedies under the s.127(1) offence could pose notable freedom of expressions risks to users. The line between tasteless, shocking or unpleasant content on the one hand, and illegal content on the other, is difficult even for courts to draw. In our view, to the extent it is criminal, abuse is better considered under the existing priority offences.

- A6.12 Similarly, we consider the ‘menacing’ element of the offence to be sufficiently captured by the priority offences involving threats, abuse, hatred and harassment and that asking service providers to specifically consider another such offence, which is a non-priority offence, would be disproportionate.
- A6.13 As to indecent content, we also have very significant concerns about how this term would be applied in practice by providers, and the impacts it could have on freedom of expression. The word ‘indecent’ is very vague. In addition, the existing priority offences relating to sexual content are already numerous.
- A6.14 When content concerns pornography and suffocation, choking or strangulation, we include guidance on this type of content in our November 2023 Consultation under the extreme pornography priority offence. We are carefully considering consultation responses which told us about evidence that strangulation is more dangerous than we thought.
- A6.15 In the same consultation we also provided guidance on the non-priority cyberflashing offence. In response to the consultation, stakeholders have highlighted evidence they argue goes against our proposed approach to this offence. We are carefully reviewing the evidence presented to us as we prepare for statement.
- A6.16 However, we do not think it would be appropriate to ask providers to treat all images of genitalia as the s.127(1) offence since this would suggest the content would be illegal even if actively solicited or welcomed by the recipient. As set out above, pornography is not illegal in the UK.
- A6.17 Content depicting sexual activity between family members which involves children is illegal under the offences relating to child sexual abuse material. Depictions of sexual activity between adult family members (‘incest porn’) are common online. Although this content may be harmful, we are not aware that viewers generally believe it to depict real relationships. Nor are we aware of any successful prosecutions of this kind of content under s.127(1), though we would welcome such information if it exists. Absent case law, we do not think it right for us to provide guidance on whether this type of content would be illegal.
- A6.18 Overall, we think it better for us to focus in on the clear gap in the framework of priority offences that exists in relation to torture content, than to widen our treatment of the s.127(1) non-priority offence.

Fraud

- A6.19 Several stakeholders responded to our November 2023 Consultation by calling for pet fraud/ pet mis-advertising to be specifically considered under the Fraud and financial services offences category.¹⁰⁶
- A6.20 This relates to matters on which we have already consulted. We are considering the representations carefully and will set out our position on them in our final decision. We will consider matters relating to fraudulent advertisements next year as part of Phase three of our work to implement the online safety regime, relating to categorised platforms.

¹⁰⁶ [Cats Protection](#), [Scottish SPCA](#), [PAAG](#), [Dogs Trust](#).