

we fully appreciate that this link has been mentioned in the consultation document, and that coercive behaviour has been included as a separate illegal harm, Battersea would strongly recommend that there is more recognition within the Ofcom's assessment of animal cruelty content, that animals can be used as part of this controlling and abusive behaviour, providing clearer links between the two offences. This may support moderators to appreciate the wide-ranging impact of animal cruelty and recognise more varied instances of cruelty content.

Search Services

The consultation document states that search services do not need to consider the risk that their service will be used for the commission of, or to facilitate the commission of, a priority animal cruelty offence (point 3.5 from the consultation document below). While Battersea understands the rationale laid out in the first clause of point 5.74 from the consultation document below. It is acknowledged in the same point that animal cruelty content is likely findable via search services, which risks harm to individuals using this service. We would argue then that at a minimum, search services have a duty to be aware of commonly used search terms relating to cruelty content and take steps to ensure that these are not optimised, to protect search service users from seeing unwanted content. We would further contend that, should a search engine be made aware that such content is being found through its platform, it should have an obligation to remove links to it, as with other illegal material.

3.5 The priority offences 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.)

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.

ii) Do you think we have missed anything important in our analysis? Please provide evidence to support your answer.

Response:

Illegal Cosmetic modifications

It is concerning that there is no explicit mention of illegal cosmetic modifications within the analysis. While we appreciate that cosmetic modifications are included in the guidance briefly under point 9.38 (a) from the consultation document (see below), the specific impact of content showing animals with mutilations warrants highlighting.

In the UK cosmetic modifications, as described in the consultation paper, such as, ear cropping, many cases of tail docking and the declawing of cats are illegal as they are classed as mutilations under the Animal Welfare Act 2006¹² and the Animal Health and Welfare Act 2006¹³ in England & Wales and Scotland respectively, consequently throughout our response Battersea will refer to them via their legal terminology. These are purely aesthetic, painful mutilations and have been

¹² <https://www.legislation.gov.uk/ukpga/2006/45/section/5>

¹³ <https://www.legislation.gov.uk/asp/2006/11/section/20>

known to cause infection and create lifelong difficulties for both cats and dogs to express normal behaviours, behaviours which are provided for under the respective Acts. Importing animals with these mutilations, however, is currently not illegal. Worryingly, a recent study by University of Liverpool into UK veterinary consultations found that 95% of imported ear cropped dogs came from countries in Europe where the procedure is also banned.¹⁴

The situation regarding these cosmetic mutilations differs from other forms of cruelty because legal loopholes, a lack of public awareness and the influence of celebrity dog and cat owners and social media have seemingly led to an increase in the popularity and the normalisation of these procedures.¹⁵ Due to this normalisation, people who would likely oppose other forms of animal cruelty are acquiring animals with these mutilations and evidence suggests it is increasingly popular; between 2015 and 2020, the RSPCA saw a 621% increase in reports of dog ear cropping.¹⁶

As social media has content from around the globe, it contributes to the normalisation of cosmetic mutilations, with many people unaware of the reality of cosmetic mutilations. In Canada 40% of people believed that cropped ears were the result of genetics rather than a procedure that had been carried out on the animal.¹⁷ Battersea is concerned that with such minimal mention of cosmetic mutilations, moderators may be unaware of what constitutes a cosmetic modification and therefore be less able to recognise when content reaches the threshold for removal.

Battersea has also found evidence of content which shows individuals going through the process of cosmetically modifying dogs and cats. [Vinnie Son of hunter](#) for example, is an Instagram account featuring a Doberman with cropped ears, which has attracted over 30,000 followers. After he was bought and imported from Belarus, his new owners undertook a process called "posting," where his cropped ears were bound to encourage them to grow into straight points. This procedure involves taping the ears to cardboard or wood to encourage growth upright instead of the ears flopping over. Vinnies owners posted content of his bound ears for around 4 months. Regarding the guidance section, specifically points 9.30 and 9.31, it is unclear whether Vinnies case would constitute an offence of encouraging, assisting or conspiring.

By promoting cropped ears, accounts like Vinnies encourage people to import dogs who have had this cruel practice performed, often illegally, in other countries. It also supports the proliferation of ear cropping as it normalises and glamourises procedures which are painful mutilations, inspiring people to do it. We have found videos on social media sites like TikTok which instruct users¹⁸ on how to post their dogs ears. It is vital that service providers understand that these procedures amount to torture, and cause pain and suffering, both in the immediate and long

¹⁴ [Dogs with cropped ears in the UK: A population-based study using electronic health records - Norris - 2023 - Veterinary Record - Wiley Online Library](#)

¹⁵ <https://pubmed.ncbi.nlm.nih.gov/36646627/>

¹⁶

https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiDjdCi6lqIAxVtVKEAHRq4NCAQFn oECBwQAw&url=https%3A%2F%2Fpoliticalanimal.rspca.org.uk%2Fdocuments%2F15717622%2F16129761%2FRSPCA%2BB riefing_%2BEar%2BCropping%2Bof%2BDogs.pdf%2Fd8884fb1-b784-eb86-9e62-4dd7585061f9%3Fversion%3D1.0%26t%3D1621942070227%26download%3Dtrue%23%3A%26text%3DEar%2520croppin g%2520is%2520an%2520incredibly%2Cand%2520can%2520become%2520infected%2520easily.&usq=AOvVaw1JueZdOA3 kNbvoRAMrhLIm&opi=89978449

¹⁷ [Tail Docking and Ear Cropping Dogs: Public Awareness and Perceptions - PMC \(nih.gov\)](#)

¹⁸ <https://www.tiktok.com/discover/posting-dogs-ears>

term. Moderators must be aware of content that is encouraging others to carry out such mutilations, which are illegal in the UK. This is glamourising crime, which the Act is intended to prevent.

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

iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

Response: No

Question 2:

i) 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.

Response:

Battersea agrees with the assessment of the links between risk factors and different kinds of illegal harm. However, we are concerned that there is a disconnect between the assessment of risk factors and some of the draft risk profiles. It is worrying that these risk profiles do not sufficiently capture the relationship between the risk factor and the risk of harm posed by animal cruelty content (please see our response to question 5).

ii) Is this response confidential? (if yes, please specify which part(s) are confidential)

Response: No

Service's risk assessment

Question 3:

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

Response:

Battersea does not have any comments regarding the *approach* to amending the draft risk profiles or the proposed risk factors for animal cruelty. We have however provided further analysis on the Risk Profiles in question 5.

ii) Please provide the underlying arguments and evidence that support your views.

Response:

iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

Response: No

Question 4:

- i) 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?

Response:

Please see our response to question 5.

- ii) Please provide the underlying arguments and evidence that support your views.

Response:

- iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

Response: No

Question 5:

- i) 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?

Response:

Battersea is concerned that some of the draft risk profiles do not sufficiently capture the relationship between the risk factor and the risk of harm posed by animal cruelty content.

Regarding point 7.15 from the consultation document: *“When consulting the list of risk factors, you should keep in mind:*

a) 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.”

Clarity would be welcome as to why Ofcom have chosen not to include risk factors that have more limited evidence. Surely the more service providers are aware of the *possibility* that there may be animal cruelty content on their service, the more likely they are to look for and recognise content that is illegal, and support the creation of an evidence base, which is the aim of the Online Safety Act. This is especially true given point 7.16 from the consultation document *“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.**”*

If service providers read the draft risk profiles and animal cruelty does not appear next to their type of service they may, quite understandably assume that they will not come across any animal cruelty content, but based on the evidence provided by Ofcom in the consultation document and to Battersea’s knowledge, they would likely be wrong. It is concerning that Ofcom have focused solely on technical evidence, which technology companies control, rather than evidence of harmful outcomes for service users and animals, which will not improve online safety in the UK. This seems too literal a definition and will risk downplaying the impact of the guidance.

Several risk profiles do not mention animal cruelty when earlier in the document under the register of risks section, these services were highlighted as likely places to find animal cruelty

content. Indeed, there have been several high-profile criminal cases where these services have been used to share animal cruelty content (see evidence in our response to part ii).

Given the outlined evidence in our response to part ii), animal cruelty should be included as an illegal harm under these respective sections in the draft risk profiles. For risk factors where there is more limited evidence, but evidence none the less, of animal cruelty content occurring, Battersea would urge Ofcom to include this within the key kinds of illegal harm section, highlighting that it may be less prevalent where necessary.

ii) Please provide the underlying arguments and evidence that support your views.

Response:

The below points have been taken directly from the evidence section of the consultation document which assesses the risks of harm to individuals presented by the different services. Under each of these user services, there is discussion that animal cruelty content will likely be found on these services, yet they have not been included within the draft risk profiles. Highlighted in yellow are the specific points where OFCOM have specifically cited an animal welfare or cruelty risk:

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*. As such, it is likely that this is reflected to some extent online, and specifically on online adult services.

- In a particularly distressing recent case, an individual was sentenced to 10 years in prison for sexually abusing dogs, he admitted to four counts of accessing child abuse material and shared videos of his abuse online.¹⁹

It is unclear why, given the seriousness of bestiality, animal cruelty has not been included in the draft risk profile for adult services. According to Ofcom's own evidence, extreme pornography involving an animal was the most commonly charged category in extreme pornography cases in England and Wales between 2015 and 2017 and content has been found on social media. As outlined in our response to Question 1, violence towards animals has been strongly linked with violence towards people, which is also evidenced by the above case of sexual abuse of dogs. The risk to users in this case is extreme and adult services must be aware of the risk of this type of content on their platforms.

File storage and file sharing

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. 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*.

¹⁹ <https://www.bbc.co.uk/news/articles/c33nv8x64mlo>

Discussion forums

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. 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*

Ofcom have described file storage and file sharing as a 'likely risk factor for this type of content', we are concerned then that animal cruelty has not been included. Similarly, it is unclear why animal cruelty content has not been included in the risk profile for discussion forums. Ofcom have supplied evidence of the horrendous monkey torture ring case which utilised discussion forums. These services have a duty under the Act to protect users from harm and they need to be aware of the very real risk of this type of content.

Services where users can post or send content anonymously, including without an account

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.*

Services with 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.*

Ofcom have highlighted that anonymous user profiles can be used to encourage, assist or conspire to commit offences and that these profiles increase the risks of users posting and engaging with animal cruelty content. Similarly for services with user connections, Ofcom have stated that these platforms allow users to share cruelty content or engage with animal trade and describe these services as a 'key risk factor for animal cruelty related harms'. Animal cruelty ought to be included in the draft risk profiles for both of these service types.

Services with 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. 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.*

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.

Livestreaming services are likely to give rise to a risk of animal cruelty content, and it is one of the only clear examples provided by Ofcom in the consultation document that would clearly constitute the offence of encouraging, assisting or conspiring to commit animal cruelty. It is imperative that animal cruelty is included in the livestreaming draft risk profile.

Services with 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.*

Given the seriousness of the monkey torture network and that direct messaging services were used in this case to share ideas for acts of cruelty to be inflicted on animals, Battersea do not understand the rationale behind excluding animal cruelty from the draft risk profile for this service. As previously stated, limited evidence should not be a factor in stopping these risks being highlighted.

Services with encrypted messaging

5.55 *Similarly, encrypted messaging may facilitate bad actors to engage in animal cruelty activities with others, without fear of detection. 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*

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

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*

Both services with encrypted messaging and recommender systems have been found to host or facilitate animal cruelty content. Services must be aware of the risk that this poses to users and remove it when it appears.

iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

Response: No

The Illegal Content Judgements Guidance (ICJG)

Question 6:

- i) Do you agree with our proposals? Please provide the underlying arguments and evidence that inform your view.

Response:

It must be highlighted that the Online Safety Act covers the UK in its entirety and so, because animal welfare is devolved, the guidance must account for the relevant offences under the respective Animal Welfare Acts. This includes the Animal Welfare Act 2006 for England and Wales,²⁰ the Animal Health and Welfare Act 2006 for Scotland²¹ and the Welfare of Animals Act (Northern Ireland) 2011²².

Guidance for Section 4 (1) Animal Welfare Act 2006

Priority offence of causing unnecessary suffering to an animal

The guidance is clear about the limitations that service providers face regarding these offences, as, in the eyes of the law, they can only take place offline. Battersea agrees with the proposals to direct service providers to the Section 127(1) Communications Act, which will compel companies to take further action and ensure animal cruelty content is removed.

Encouraging, assisting, or conspiracy to cause unnecessary suffering

Regarding guidance points 9.30 and 9.31 from the consultation document which consider the offence of encouraging, assisting or conspiring to cause unnecessary suffering, Battersea is concerned that the guidance as currently drafted would lead to excessive instances of animal cruelty content continuing to exist online. Earlier in the document (points 5.18 and 5.19 from the consultation document below), there is an acknowledgement that the very existence of animal cruelty content poses a risk to users and contributes to activities which do explicitly encourage, assist or conspire. Yet under the guidance (point 9.24 from the consultation document below) the threshold for 'encouraging assisting or conspiring' is unclear and we are concerned that it could be unachievable. We would consider deleting the last sentence in section 9.31, as there is a concern that this could too easily provide a defence for inaction on the part of service users or potential offenders that "we thought they were joking", which would be very difficult to disprove. Removing that sentence would make this less likely.

Regarding point 9.55 specifically (see below), the guidance wording is complex, and places a significant burden on the service providers to prove various elements of the offence. It is difficult to prove the state of mind of the person featuring in a video when the service provider is not present at its creation. Some elements of the guidance allow service providers to use their own initiative to remove content which they deem to fall under this offence, which allows flexibility and may make the role of moderator easier. However, this has the potential to create a loophole where a lot of cruelty content would be allowed, depending on the service and the moderator that is reviewing content. Content creators may also learn new ways of 'encouraging' without doing so explicitly to avoid their content being removed, like the use of coded terminology to

²⁰ <https://www.legislation.gov.uk/ukpga/2006/45/contents>

²¹ <https://www.legislation.gov.uk/asp/2006/11/section/20>

²² <https://www.legislation.gov.uk/nia/2011/16/contents>

promote dog fights.²³ In our view, it is imperative that such content be taken down from platforms when reported.

Furthermore, whilst the guidance is extensive, it doesn't fully consider the volume of content that can exist on certain sites, which will require significant investigation. Indeed, the SMACC report alone found 5480 videos on across 3 social media platforms in 13 months.²⁴

It is essential that the guidance is sufficiently robust to allow the Online Safety Act to achieve what it has set out to do. Points 9.65 and 9.66 are good examples of clear, jargon free guidance which do not place excessive burden on moderators to learn huge amounts of law and are comprehensive enough to enable them to quickly discern content which ought to be removed.

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.

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.

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

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).

Guidance on s.127(1) offence

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

²³ [Deadly-Dogfighting-on-Facebook-An-LFT-Report-May-26-2019.pdf \(squarespace.com\)](#)

²⁴ [SMACC Report 2021 | SMACC \(smaccoalition.com\)](#)

Regarding point 9.45 from the consultation document (below), Battersea strongly supports the inclusion of a section in the illegal contents judgements guidance on how to discern when content is 'obscene' under the s.127(1) offence. The below wording is clear and outlines how service providers should approach such content, however, regarding point 9.46 from the consultation document (see below) Battersea argues that "unlawful" would be clearer and easier to enforce than "for no good reason". "For no good reason" is subjective and can be heavily influenced by an individual's ethical framework, context that may not be present when the video is later viewed or (where the video is created for financial gain) one's view on whether this constitutes good reason. While we appreciate that service providers may not be based in the UK or know what is lawful, it is their duty to identify content which constitutes an offence. They ought to be provided with a reference list or a set of criteria on what is and isn't lawful to allow them to carry out their role as a moderator.

It is worth highlighting the Lady Freethinker research which is referenced in the consultation document²⁵ on dog fighting, their investigation reported 26 posts deemed to violate Facebook's own policies on animal cruelty. The posts in some cases depicted graphic violence. However, Facebook declined to remove all but six of them. In one specific case the image reported was a still image of a dog fight, where one dog is latched on to the other inside a fight 'ring'. Facebook states the image does not go against their community standards and did not remove it. Because this is clearly a depiction of a past instance of animal cruelty, under the new guidance it would be reviewed as a non-priority offence under s.127 of the Communications Act. Using 'unlawful' rather than 'for no good reason' would make it clear that in this case, the content would constitute a non-priority offence, removing the burden from service providers and ensuring the content would be removed.

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) 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

ii) Please provide the underlying arguments and evidence that support your views.

Response:

The evidence for these arguments is included in our response to Part i).

iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

Response: No

²⁵ [Deadly-Dogfighting-on-Facebook-An-LFT-Report-May-26-2019.pdf \(squarespace.com\)](#)

Question 7:

- i) Do you consider the guidance to be sufficiently accessible, particularly for providers with limited access to legal expertise?

Response:

Overall, the guidance offers a reasonable framework for informing providers, such as social media companies, about their legal responsibilities regarding animal cruelty and torture content on their platforms. However, there is some concern about the burden placed on moderators to accurately determine certain violations, particularly the offence of encouraging, assisting or conspiracy to cause unnecessary suffering to an animal. This could lead to confusion, potentially allowing offences to go unaddressed and leaving harmful content on the platforms.

Battersea recommends including some examples of content that would constitute each offence, and perhaps a set of criteria, against which moderators can measure content. It would be particularly useful to use examples which may not be clear cut. For example, a livestream of an animal being explicitly tortured would obviously reach the threshold and be removed; it would be helpful to use examples of content which is more ambiguous, such as a slow loris being 'tickled', a still image of a dog fight, or images of dogs' ears being cropped and pinned.

- ii) Please provide the underlying arguments and evidence that support your views.

Response:

The evidence for these arguments is included in our response to Part i).

- iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

Response:

No

Question 8:

- i) What do you think of our assessment of what information is reasonably available and relevant to illegal content judgements?

Response:

Recognising signs or fear or distress

Regarding points 9.38 and 9.39 (below) and what it is reasonable to say a user should know, it is not clear which species of animal and what signs of distress would be reasonable for moderators to assume content creators would recognise. Under point 9.38 (b), singling out behaviour that a *non-expert* would consider clearly indicates distress, defensiveness or aggression has the potential to leave swathes of species at risk of cruelty, may encourage content creators to use species whose behaviour is not widely understood, and risks allowing serious harm to users to continue. It is also complicated to ascertain what a non-expert would consider. For example, research on 'fake rescue' videos has documented the exploitation of snakes, who have shown signs of physical abuse and distress²⁶, but a non-expert may not recognise these signs. Similarly, regarding dog

²⁶ [Views That Abuse \(worldanimalprotection.org\)](https://www.worldanimalprotection.org/)

behaviour, it may not be widely known that whale eye, and some behaviours around children which are seen as positive are actually signs of distress and fear and could in fact put children at risk.

The Online Safety Act gives content moderators a duty to recognise signs of distress, defensiveness or aggression across multiple species to fully protect service users and animal welfare and ensure that cruelty content doesn't proliferate. Battersea appreciates it is not reasonable nor feasible for every moderator to know the behaviours of all species, where moderators are unsure of these signs, there ought to be processes in place for them to research, use reference tools or have an extensive set of criteria against which to measure content.

Intentional and unintentional cruelty

We appreciate that Ofcom only have the powers given to them under the Act and therefore cannot stipulate that services take action against all content in which a user's conduct may mean animals are caused unnecessary suffering, even where the person causing the suffering is unaware. However, this clause within point 9.39 '*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*', does not go far enough to encourage service providers to remove content which is damaging for both animal welfare and service users. The guidance could do more to support the removal of content which may be considered 'ambiguous and unintentional' but nevertheless depicts animal suffering. Similarly, simply removing the material is only half of the problem, service providers should be provided with standardised wording and materials to clarify why the material was removed and educate the public.

The SMACC report found that the majority of animal cruelty videos are ambiguous and unintentional.²⁷ One example categorised as such, is a 'fake rescue' video titled 'puppy is getting rescued from the clutches of a python', the image included in the SMACC report shows a small puppy with a large python wrapped around its body, the dog has whale eye, this happens when a dog turns its head away but continues to look at an object, animal or person – revealing the whites of its eyes indicating distress. From the perspective of the animal, it does not matter whether the suffering was caused intentionally or unintentionally. Similarly, from the perspective of the user, it does not matter whether the suffering was caused intentionally or unintentionally, it is still distressing to witness.

The availability of this type of content, particularly on social media, is giving people the impression that abusing animals can be both acceptable and profitable. Social media plays a huge role in shaping society and if this content goes unchecked, this kind of behaviour towards animals becomes normalised.

Battersea has done extensive research into trends on social media which are negatively impacting the welfare of animals. For example, people barking in the face of their dog,²⁸ or buying exotic hybrid cats²⁹ and walking them on leads.³⁰ These trends are damaging to animals, causing fear and

²⁷ [SMACC Report 2021 | SMACC \(smaccoalition.com\)](#)

²⁸ <https://www.tiktok.com/@ladbible/video/7030768017101294853?lang=en>

²⁹ [https://www.four-paws.org/our-stories/publications-guides/hybrid-cats-problematic-exotic-breeds#:~:text=Well%2Dknown%20exotic%20breeds%20include,5\)%20%2D%20and%20domestic%20cat.](https://www.four-paws.org/our-stories/publications-guides/hybrid-cats-problematic-exotic-breeds#:~:text=Well%2Dknown%20exotic%20breeds%20include,5)%20%2D%20and%20domestic%20cat.)

³⁰ [Stryker 🐱 \(@strykerthecat\) • Instagram photos and videos](#)

stress. In the above referenced TikTok video of the user barking at their dog, the dog is visibly very distressed, it is wide eyed, jumps around and hard stares at the owner. This is not only extremely damaging to the welfare of the dogs, but it is a risk to public safety; dogs can understandably react badly when they are put in such high intensity, threatening and confusing situations. The Online Safety Act provides a real opportunity to crack down on this type of content and protect both service users and animal welfare on a huge scale.

Battersea would encourage the inclusion of further provisions which convey the seriousness of all animal cruelty content, even that which will not constitute an offence under the Online Safety Act, this will hopefully embolden service providers to remove more content. Without such provisions, the Online Safety Act may not reduce the volume of animal abuse and cruelty content available online and will not reduce risk to users.

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.

ii) Is this response confidential? (if yes, please specify which part(s) are confidential)

Response:

No