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CHIS response to the Home Office consultation on the possession of non-photographic visual depictions of child sexual abuse

CHIS consider that it is right to make non photographic visual depictions of child sexual abuse illegal. The consultation document correctly states that part of the pressure to bring forward a discussion about whether or not a change in the law is needed in relation to non-photographic visual depictions of child sexual abuse came from the children's charities represented within the Home Office Task Force Criminal Law Sub Group. Our view was, and remains, based on two principal considerations:

1. Our working relationships with different police forces across the UK have made us aware that these types of materials are appearing more frequently in the possession of persons being arrested for or being charged with child pornography offences. In particular this response draws upon evidence from the NSPCC's dedicated service 'E-spy' that works alongside the Metropolitan Police, Greater Manchester Police and West Midlands Police on investigations involving child abuse images.¹ This has shown us that non photographic depictions of child sexual abuse appear to be becoming part of the ecology of child abusive material and in our view the extent that it remains legal suggest a degree of acceptance or tolerance of depictions of sexually abusive material involving children. This in our view serves to rationalize sexually abusive behaviour towards children in the real world and potentially serves to legitimise it in abusers minds. By contrast we believe that it needs to be made absolutely clear that any and all such depictions are completely unacceptable.
2. Advances in technology have made it possible to create materials which are entirely artificial but which, in turn, are indistinguishable from photographs or videos of real events. In order to be consistent the law therefore needs to keep abreast of these developments as we know from experience that any loophole will swiftly be exploited by persons with a sexual interest in children.

This consultation asks about the most appropriate way to make this material illegal. The children's charities coalition on Internet Safety considers that option one would be the most appropriate. This would effectively extend the definitions in the Protection of Children Act 1978 which refer to indecent photographs or pseudo photographs of a child under 18 to include for example 'any visual representation', covering cartoons, drawings, and computer generated images. We disagree with option two which would effectively create a different threshold than indecency for non-photographic visual representations.

The consultation document is mistaken to state on page 6 that the thinking behind the current law is designed to protect real children from real abuse. The Criminal Justice and Public

¹ This service deals with cases where offenders have collected and stored non-photographic visual depictions of child sexual abuse including cartoons such as Manga and Hentai.

Order Act 1994 which amends the Protection of Children Act 1978 (Part 7, section 84) states that

'If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Act as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.'

Pseudo photographs may well depict events that have not actually happened, yet they remain illegal. Therefore the thinking behind the current law appears to be: if it looks like child pornography, it will be treated under the law as if it is child pornography². In the UK it has never been necessary to show that an actual child was actually abused in the real world for an image to be considered illegal. The reasoning for this was based in part on a judgement about the contingent effect of such images. We support this approach and consider that it shows that option two would be mistaken.

The outlawing of non-photographic depictions of child sex abuse must be rooted in the same logic as that underpinning the outlawing of pseudo photographs. This argues for Option One in the White Paper i.e. that these depictions should be treated in the same way as photographs and pseudo photographs. We consider that the threshold for criminalisation should be the same and we are concerned by the current proposal that would not include within the legislation non penetrative sexual activity between children or sexual images of children on their own. Introducing a lower threshold for non photographic images in our view diminishes their seriousness. We can see no reason why the indecency threshold for non-photographic depictions should be any different from that which applies to photographic or pseudo photographic depictions. Similarly we see no reason why the penalties should differ. If there are any attenuating circumstances these can be reflected in the sentencing.

Beyond that we accept and support the proposition that the indecency threshold will need to be carefully described in law to justify what is and is not included. We agree that this should not capture or affect works of art or works of historic importance and that the defences set out in the document are broadly appropriate. There is need for definitions of this to be tightened however as we are concerned by some of the assumptions made in the document. We are, for example, unsure who in the internet industry or elsewhere is referred to on page 7 and why they would have legitimate reasons to come into possession of this material unless they have a specific remit for identifying and dealing with it or they are in a role that would reasonably be expected to be covered by other defences.

Another assumption that we are concerned by in this document is the assertion that it will be possible to remove these images from circulation. We find this to be a misleading and naive comment as we are well aware that it is impossible to remove photographic images from circulation once they are on the internet (and it will be the same with this material). Making possession an offence is an important step but it does not mean that images can be taken out of circulation or made unavailable as a grooming tool. Indeed we have worked with children who have had to grow up knowing that the images of their own child abuse are still in existence and that increasing numbers of people will collect and view them. We need to be realistic about the challenges we face in providing therapeutic care for these children and about the scale of the problem we face in tackling the circulation and distribution of these images of children.

We also think it is important to make clear that if offenders have committed these offences they should be offered appropriate therapeutic interventions either in the community or in prison. It is also essential that if the police choose to confiscate or destroy certain material, rather than prosecute the offender, the fact of the inquiry should be available on subsequent

² We use the term Child Pornography here as it is the term used in the legislation including POCA 1978 and Sexual Offences Act 2003. In general we prefer the term Child Abuse Images as we consider the 'child pornography' undermines the seriousness of the images and implies consent on the part of the child.

CRB checks. Any new offences must be included in considerations made by the new independent barring board.

It is also important that any legal changes are accompanied by sufficient education and communication that these materials will be made illegal. It is important to recognise that many children and young people themselves collect comics that have a highly sexualised content and we would not want any relatively mainstream material or behaviour on their part to be made illegal. We also suggest that the response to children persistently viewing such images should be a developmentally appropriate assessment of their behaviour and if necessary a treatment intervention rather than a criminal justice response.

Although it is not covered by this consultation, CHIS also note with concern the existence of other kinds of materials that would increase or encourage the incitement of child abuse that are not currently illegal. This includes sound recording tapes of abuse (including the voices of victims recorded during sexual abuse) which are made and circulated by abusers to legitimise abusive behaviour and to groom children. We are also concerned by recent reports of 'virtual' sexual abuse taking place in online environments as part of a virtual fantasy abuser experience. We urge the Government to continue to monitor this and legislate where necessary against sound recordings, fantasy stories or any other material that would incite offender denial or allow offenders to exploit loopholes in the law to abuse children.