



Non- Photographic Imagery (NPI) Policy

Vrs	Date	Prep'd	Auth'd	Date	Comments
1.0	04/12/2017	MT	Board	17/07/2018	Approved by Board
2.0	16/10/2019	CH	FL	16/10/2019	Annual change and no changes
3.0	09/12/2020	TMN	CH	09/12/2020	Annual review – minor change para 2.5

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1 Background

- 1.1 In June 2009, the Ministry of Justice asked the IWF to extend our national Hotline to enable the public to report online non-photographic visual depictions or Non-Photographic Imagery (NPI) hosted in the UK of the sexual abuse of children, covered by sections 62-69 on the Coroners and Justice Act 2009.
- 1.2 Following consultation with Funding Council and industry Members, in October 2009, the IWF Board informed Government of our agreement to fulfil this role from 6 April 2010.

2 The Law

- 2.1 Section 62 (1) of the Coroners and Justice Act 2009 creates a new offence of possession of a prohibited image of a child, punishable by up to three years' imprisonment. This offence became law in the UK on 6th April 2010 and is not retrospective.
- 2.2 Guidance has been produced to assist prosecutors when making decisions on whether or not to prosecute for the offence of possession of a prohibited image of a child. The offence is targeted at non-photographic images (NPI) (including computer generated images (CGI), cartoons, manga images and drawings) and therefore excludes indecent photographs, or pseudo photographs of children, as well as tracings or derivatives of photographs and pseudo-photographs.
- 2.3 In order for an image to be a "prohibited image" as defined in the Coroners and Justice Act 2009 there are three elements that must be satisfied. An image must meet all 3 elements which are:
- 1 That the image is pornographic
 - 2 That the image is grossly offensive, disgusting, or otherwise of an obscene character; and
 - 3 That the image focusses solely or principally on a child's genitals or anal region, or portrays any of the following acts:
 - The performance by a person of an act of intercourse or oral sex with or in the presence of a child
 - An act of masturbation by, of, involving or in the presence of a child
 - An act which involves penetration of the vagina or anus of a child with a part of a person's body or with anything else;
 - An act of penetration, in the presence of a child, of the vagina or anus of a person's body or with anything else;
 - The performance by a child of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary);
 - The performance by a person of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary) in the presence of a child.
- 2.4 The Act defines a "pornographic image" as one which must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal. Whether this threshold has been met will be an issue for Magistrates, District Judge or Jury to determine by looking at the image in question. It is not a question of the intentions of those who produced the image. Nor is it a question of the sexual arousal of the defendant.

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2.5 Although the Act defines what can be classified as NPI, the IWF believes that the Act can be subjective and could therefore give rise to complaints about action the IWF has taken to remove or block access to content. Therefore, the IWF will only act against an image which is:

- Pornographic
- Grossly offensive, disgusting, or otherwise of obscene character
- That the image focusses solely or principally on a child’s genitals or anal region

And contains one of three below;

- The performance by a person of an act of intercourse or oral sex with a child
- An act which involves penetration of the vagina or anus of a child with a part of a person’s body or with anything else;
- The performance by a child of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary);
- The performance of intercourse or oral sex with an animal (whether dead, alive or imaginary) in the presence of a child
- An act which involves masturbation of, by or in the presence of a child

3 Assessment

3.1 Upon receipt of a report which results in the positive identification of NPI which is believed to breach the IWFs standard as outlined in 2.5, the IWF will use their report management system (RMS) to send an email to the NCA’s CSE Referrals Bureau at the earliest opportunity. The email will contain all the necessary detail required by law enforcement and industry to identify that content including:

- Code Identification reference that the report is specific to NPI
- The full URL of the offending content
- The time and date that the content was accessed and assessed
- IP address of the offending content and netblock information
- IWF URN (Unique Reference Number)
- Contact details of IWF analyst making the assessment
- Indication (if known) of where the IWF believe the server(s) to be hosted indicating the relevant local force
- CloudFlare service confirmation details (where applicable) that the content is hosted in the UK

3.2 The decision to progress an investigation or issue take down notice resides with law enforcement and the IWF will provide any evidential support it can in subsequent investigation (s) resulting in court proceedings.

3.3 With regard to NPI reported to the IWF which fails the IWF threshold, but which is hosted outside of the UK, the following will apply:

The NPI will be added to a stand-alone ‘NPI URL List’ and this list will be made available for IWF industry members to decide on an individual basis whether they want to receive the list and if so, to deploy it on a voluntary basis to protect their customers.

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4 Consistency with other IWF Policies

- 4.1 To ensure that the NPI policy was consistent with previous content policy decisions made by the IWF Board the same criteria were agreed.
- 4.2 An additional consideration was that the NPI law is only relevant in the UK law. The majority of content that would fail the elements omitted are almost universally hosted outside the UK (Generally on Japanese sites containing Manga, Anime, Hentai etc) were the content is legal which would draw an already limited hotline resource into spending a disproportionate amount of time considering factors such as whether the person in the image could in fact be assessed as a child when a notice for removal would not be considered by the hosting provider. In addition to the above the legislation was developed to provide support to the police as they were required to view all images contained within a forensic capture of a suspect and return those that did not fail UK law. In this case many obscene CGI generated images were having to be returned to convicted paedophiles as they were at the time deemed legal.

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