

2005 - Home Office consultation on Possession of Extreme Pornography

This is JANET(UK)'s response to the [Home Office/Scottish Executive consultation](#) [1] on possession of extreme pornographic material.

The JNT Association, trading as JANET(UK), is the company that runs the JANET computer network. The JANET network connects UK universities, Further Education Colleges, Research Councils, Specialist Colleges and Adult and Community Learning providers. It also provides connections between the Regional Broadband Consortia to facilitate the DfES initiative for a national schools' network. As the provider of a large private telecommunications network to the education sector, JANET(UK) welcomes measures that would be effective in reducing the amount of harmful content on the Internet, but is also concerned that the operators of computer networks and systems (both at the national level and within educational organisations) must have a clear legal framework and processes to protect them from personal and legal ill-effects if such material is accessed using their systems.

This response is structured around the questions set out in the consultation document, repeated in *italic* below.

- 1. Do you think the challenge posed by the Internet in this area requires the law to be strengthened?*
- 2. In the absence of conclusive research results as to its possible negative effects, do you think that there is some pornographic material which is so degrading, violent or aberrant that it should not be tolerated?*
- 3. Do you agree with the list of material set out (in paragraph 39)?*

We consider that the responses to these questions are a matter of personal opinion and therefore not appropriate to a corporate response such as this. However we consider that it is essential that any law should relate to particular types of content, and not to the means (for example the Internet) by which they are obtained.

- 4. Do you believe there is any justification for being in possession of such material?*

The consultation paper itself notes that there is a shortage of research on the effects of this type of material. It is important that legislation does not prevent the performance of such research, done with appropriate authorisation and under appropriate controls to prevent harm. We therefore believe that there should be a statutory "good reason" defence to any new criminal offence of possession so that researchers can have prior assurance that they will not be exposed to criminal liability. Were such research to be carried out in universities, the Acceptable Use Policy for JANET would already prohibit the use of the network to access the

material, other than in the context of genuine research. In such cases we would expect, and recommend, the researchers and their organisations to make appropriate arrangements with the Home Office or Scottish Executive.

Where material is discovered on computers or networks, it is essential that their owners or authorised system administrators are able lawfully to take steps to preserve evidence for subsequent Police investigation. Otherwise they will have no lawful course of action other than to immediately destroy the evidence. Any new legislation must therefore provide at least the same protection as contained in section 46 of the Sexual Offences Act 2003. For clarity we strongly recommend that the same legislative and operational provisions are used for this new type of material, and we strongly support the suggestion in the consultation paper that this should "mirror existing arrangements for child pornography". In particular:

- Those who have legitimate reason to handle such material in the early stages of a criminal investigation (which is not just police officers, or any other group who can be identified in advance) must be protected by both statute and a Memorandum of Understanding the same as, or equivalent to, that between the Crown Prosecution Service and Association of Chief Police Officers for indecent images of children;
- The Internet Watch Foundation should be recognised as the appropriate body providing both reporting of this new type of illegal content, and a trusted database of sources that can be used by Internet Service Providers as a basis for their own blocking or filtering services.

Options for legislation

5. *Which option do you prefer?*

6. *Why do you think this option is best?*

We agree that option 3, a new freestanding Act, is to be preferred as it gives clarity of purpose and definition of the new offence, while reducing the risk of interference with the existing, generally satisfactory, legislation on publication. We also consider that, as with the Sexual Offences Act 2003, the new Act should state that prosecutions may only be initiated by the Director of Public Prosecutions to ensure that "good reason" and other possible defences are considered before a prosecution is launched.

7. *Which penalty option do you prefer?*

As a matter of logic, the suggested penalties appear to be consistent with those in existing legislation

Further comment

We consider that the creation and enforcement of legislation addressing the "consumer" end of extreme pornography must be accompanied by continued action to address the problem at the "supplier" end. As has been shown in the case of indecent images of children, until there is both international agreement on the types of material that should be controlled and effective enforcement against those who continue to provide it, material will continue to be available to those who are determined to obtain it. Action against individual consumers can be effective, but can also be costly in time and resources as shown by the very large investigative effort required to deal with the results of Operation Ore and similar investigations. We therefore support the conclusion of paragraphs 55 and 56 that international efforts must continue

towards a long-term solution.

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[1] <http://www.homeoffice.gov.uk/documents/cons-extreme-porn-3008051/>