

# SWGfL Response to Ofcom Illegal Harms Consultation Feb 2024

*Responses that are confidential will be marked as such throughout.*

*Please note that, due to the complexity and overwhelming volume (nearly half a million words - 464,057 - in the 6 volumes excluding the annexes), we reserve the right to submit further comments in the future.*

## Summary

This document is SWGfL submission to the Ofcom's illegal harms consultation, we have chosen to focus on three main areas of concern: implementation of StopNCII.org, ensure sufficient acknowledgement of intimate image abuse as a gendered issue and implement an Alternative Dispute Resolution framework.

### *StopNCII.org*

StopNCII.org is the world's first device-side hashing technology freely available to any adult in the world to create hashes of their own private sexual content which are then shared with industry partners to prevent the sharing and resharing of that private content on those platforms. Hosted and run by SWGfL, StopNCII.org represents a unique opportunity to protect adults from the non-consensual sharing of intimate images.

We believe it is essential that Ofcom make it a mandatory requirement for platforms allowing the uploading of user content to take StopNCII.org hashes.

### *Gendered nature of intimate image abuse*

Total reports to the Revenge Porn Helpline have seen a tenfold increase in the last four years. While men are predominantly affected by sextortion perpetrated by overseas criminal gangs, women are disproportionately affected by intimate image abuse perpetrated by people known to them. See data in volume 2.

We believe that the guidance does not sufficiently reflect the gendered nature of intimate image abuse.

### *Alternative Dispute Resolution*

We are very concerned that currently users have nowhere to go to challenge decisions made by platforms around the removal of content.

**We believe that this guidance would benefit greatly from incorporating an alternative dispute resolution model to provide users with the opportunity for redress where content continues to cause harm and is not removed.**

## SWGfL Response to Volume 2

### *The causes and impacts of online harm.*

Forms of online harm, including intimate image abuse, disproportionately impact women and girls worldwide, as noted within volume 2, 6M. We are pleased to see important observation and detail paid to the gendered impact of intimate image abuse on women, alongside other risk factors such as age, sexuality and cultural diversity.

The large-scale volume of intimate image abuse cases occurring in the UK is recognised by several NGOs (6M.13-14), highlighting a range of behaviours including domestic abuse contexts, deepfakes, cloud hacking and collector culture. All of these have resulted in a tenfold increase in reports to RPH in four years.

Whilst volume 2, 6M briefly recognises the additional contexts which can exacerbate the harm and impact caused, there is little detail of marginalised groups and culturally sensitive content. The severity of consequences of intimate image abuse within diverse cultural groups is vital to understand, the risks of honour-based abuse, honour killings and community ostracisation should be considered.

The case study delves into the qualitative exploration of the profound impact that both Intimate Image Abuse (IIA) and online harms can have on a client coming from a culturally sensitive background. Our client found herself in a distressing situation when her intimate images were maliciously shared online by an ex-partner. The Revenge Porn Helpline successfully removed 3067 of these images, and an additional 188 impersonation accounts spanning Facebook, X, Instagram, TikTok, and YouTube were reported for removal by Report Harmful Content.

Compounded by the cultural sensitivity of our client's background and the explicit nature of the content, she faced severe ostracization within her community. This

social isolation has taken a considerable toll on her emotional well-being, underscoring the far-reaching consequences of what has happened.

Recently, a disturbing trend of harassment has impacted over 20 females from ethnic backgrounds across all helplines at SWGfL. In numerous cases, individuals are being maliciously impersonated on social media by ex-partners, friends, or family members. These are exploiting images that may carry cultural or personal significance, such as those depicting the individuals without a hijab or engaged in public displays of affection. We strongly believe that this behaviour is intended to harass, degrade, and humiliate the victims, particularly former partners.

In some instances, the consequences have been severe, with cases of individuals being unable to travel back to their home countries due to the shame and disgrace brought upon their families by these manipulated images. This distressing pattern underscores the urgent need to address and combat this form of harassment.

There is lack of attention paid to the interconnectivity of offline and online instances of abuse. In 2022, SWGfL commissioned research for the University of Suffolk on the intersection and overlap of online and offline abuse. This research is attached as **Annex 2022-07-15 Project Minerva Interim report**.

*See 2.1, Key findings:*

*“2.1 “This is something that's going to be with me for the rest of my life”: tracking abuse and understanding harms.*

*Our survey, interview and scoping review findings indicate that women in the UK and beyond experience a range of forms of online abuse, including as part of a wider pattern of abusive, coercive, controlling and/or harassing offline behaviours. Moreover, there are striking parallels between these findings on online abuse and the wider literature on how VAWG shapes women and girls' lives, including exposure to social and professional harms and reduced access to collective goods and public spaces (Vera-Gray & Kelly, 2020).*

*See specifically: Figure 3: Perpetrator relationship to victim-survivor, Figure 6: Emotional impacts of abuse, Figure 7: Social and professional impacts of abuse, Figure 8: Behavioural impacts of abuse, Figure 9: Where the victim-survivor reported abuse, Figure 10: How participant felt as a result of reporting, Figures 14 & 15: Selected excerpts from victim-survivor survey respondents.*

Extreme Pornography

A risk factor not discussed within volume 2 6L, referring to ‘extreme pornography’, is the concern of extreme content ‘going underground’ due to the implementation of regulation, which will cause difficulty for the detection and removal of such content.

The definition of ‘extreme pornography’ is currently limited, however, both the Revenge Porn Helpline and Report Harmful Content services continue to receive frequent reports of content that meet the criteria but fall outside the services’ current remits. These include content depicting bestiality, rape and significant violence. For example, in 2023 we received 30 reports of content including bestiality. We believe that online platforms that share content should be mandated to hash extreme pornographic content to reduce visibility and therefore harm.

Revenge Porn Helpline case data.

Please note, this data is *confidential*.

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## SWGfL Response to Volume 3

*How should services assess the risk of online harms?*

### Governance

SWGfL do not agree with the proposals in relation to governance. In many cases, the proposals would obligate platforms to do less than they are currently doing today, therefore we expect platforms to provide less protection. Intimate image abuse has an evidenced disproportionate impact on women and girls (see data in volume 2). Without obligations to hash content (e.g. NCII), we anticipate that platforms will likely remove the current safeguards to default to the minimum requirements.

The proposals are not robust enough and do not facilitate enough accountability. The more robust frameworks are only included for bigger eligible platforms while, in our experience, some of the riskiest platforms are smaller. The Revenge Porn Helpline can evidence the spread of NCII content across smaller platforms.

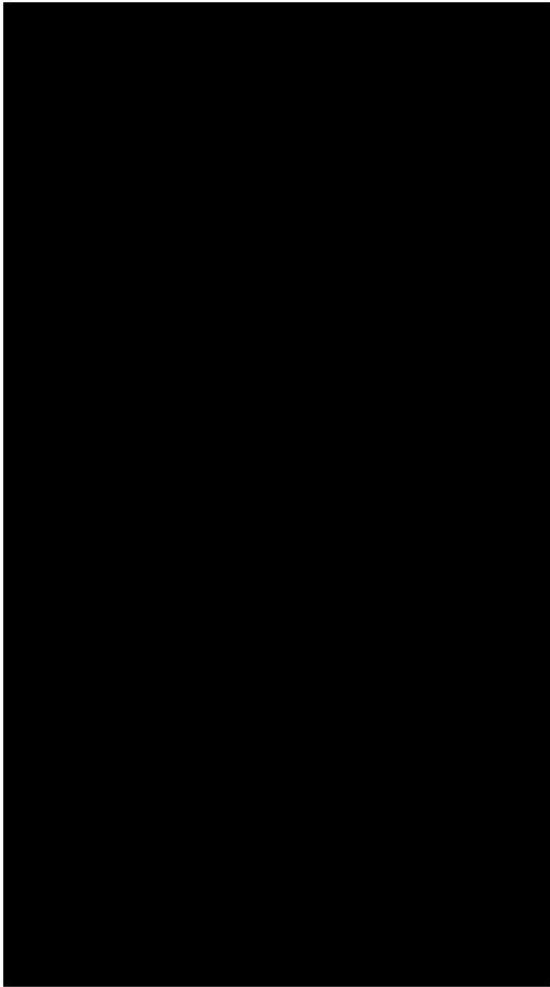
SWGfL do not believe that internal monitoring is sufficiently independent. Platforms should be monitored by an external independent auditor to maintain independence

and impartiality and therefore public trust in the maintenance of platforms as safe spaces.

Platforms sharing NCII content

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These sites represent a high risk of harm because:

- as they are predominantly adult sites that already host sexual content making it harder to identify NCII;
- many are file sharing sites, making content harder to locate and access to report;
- the sharing of sexual content is the business model, reducing the incentive for sites to make available effective reporting routes;
- the sharing of non-consensual content is part of the business model reducing willingness to comply with UK legislation or takedown requests.
- many sites are hosted overseas, reducing the incentive for them to comply with UK legislation or takedown requests;
- the difficulties of reporting and removing content from these sites means that the content remains accessible online, increasing the chances of it being downloaded and reshared, perpetuating the significant and ongoing harm to victim/survivors.

Client quote **confidential**:

[REDACTED]

Types of service we propose governance and accountability should apply to

We foresee significant difficulties for Ofcom effecting compliance from sites based outside of the UK. Many of the sites we report to where NCII content is actively and maliciously shared are hosted abroad, e.g. in Russia, Malaysia, South America. This presents huge difficulties with reporting and removing content which (as discussed above) prolongs and intensifies the harmful impact of intimate image abuse.

*Case example*

[Operation Makedom](#) saw the RPH working with the National Crime Agency to support c.150 victims of a single perpetrator with the removal of NCII content. To date we have reported over 160,000 individual images and removed over 143,000 with a 90% removal rate. Many of the outstanding 16,000 images are hosted in large galleries on dedicated sites, easily available to anyone in the UK, despite the conviction of the perpetrator and sentence of 32 years in prison. The fact that this content, because it depicts adults, is still deemed **legal content** in UK law, reduces our ability to report and remove the content and stops ISPs from blocking it to reduce its visibility and perpetuating the harms outlined.

The importance of providing an independent appeals system

Increasingly Governments across the world are supporting victims of online harms through independent appeals. These procedures are also referred to as ombudsman or dispute resolution processes that enable those who have made a report to a platform, to raise a complaint about the response they received from the platform.

Examples of independent appeals processes exist in [Australia](#) and [New Zealand](#) but more countries are now also adopting independent appeals, for example the new



[Irish Online Safety and Media Regulation Bill 2022](#) includes provision “for the making of a complaint to the Commission”.

Within the UK, SWGfL (as a partner in the UK Safer Internet Centre) has operated [Report Harmful Content - We Help You Remove Content](#) since 2019 to encourage those experiencing legal but harmful content to report to platforms and then providing an independent appeals process. Report Harmful Content (RHC) has no regulatory powers and merely holds platforms to account to their own published terms and conditions.

Data gathered from the 2022 annual report showed that:

- 11% of reports were escalated to industry platforms – ie 11% of the reports made to RHC resulted in an independent appeal with us mediating between a victim and the industry platform concerned. 89% resulted in further explanations of why content would not infringe platform community standards.
- Of those reports escalated to industry 87% were successfully actioned and harmful content was removed
- In approximately 1/3 of all reports, signposts to the correct industry reporting routes were provided.

This evidence emphasises the importance of an independent appeals process in the user reporting journey. A significant number of report responses received by victims of harmful content from industry platforms were initially incorrect and RHC was able to resolve. Had RHC not been there, the harm occurring may not have been realised or addressed.

Referencing Report Harmful Content, [the Draft Online Safety Bill \(Joint Committee\), in December 2021](#) recommended (paragraph 457) that; *“The role of the Online Safety Ombudsman should be created to consider complaints about actions by higher risk service providers where either moderation or failure to address risks leads to significant, demonstrable harm (including to freedom of expression) and recourse to other routes of redress have not resulted in a resolution”* and that *“We suggest that the Department look to Report Harmful Content as a potential model for what such an Ombudsman could look like”*.

The Draft Online Safety Bill (Joint Committee) report went on to justify the recommendation (paragraph 456) highlighting *“service providers’ user complaints processes are often obscure, undemocratic, and without external safeguards to ensure that users are treated fairly and consistently”*, concluding that *“It is only through the*

*introduction of an external redress mechanism that service providers can truly be held to account for their decisions as they impact individuals".*

On [Thursday 9<sup>th</sup> June 2022 where the Online Safety Bill received its Seventh sitting debate](#), much discussion related to independent appeals (referred to here as the need for an ombudsman).

The Digital Minister recognised that; *"In some parts of our economy, we have ombudsmen who deal with individual complaints, financial services being an obvious example. The Committee has asked the question, why no ombudsman here? The answer, in essence, is a matter of scale and of how we can best fix the issue. The volume of individual complaints generated about social media platforms is just vast"*.

This attracted a heated debate including the following responses:

Dame Maria Millar MP said; *"it is not a good argument to say that this is such an enormous problem that we cannot have a process in place to deal with it.*

Kim Leadbeater MP said; *"Surely, if we are saying that this is such a huge problem, that is an argument for greater stringency and having an ombudsman. We cannot say that this is just about systems. Of course, it is about systems, but online harms — we have heard some powerful examples of this — are about individuals, and we have to provide redress and support for the damage that online harms do to them"*

#### *Children and young people and lack of redress*

Children harmed by a service's design feature must not be left without a form of redress despite the fact that children are vulnerable to a wide range of harm online ([link](#)). Once a child encounters content or activity which violates a services' statutory safety duties under the Bill, this must be reported and addressed as a matter of priority. There is no mechanism in the Bill for individuals to bring a complaint to a regulatory authority or advocacy body in cases where they have come to harm.

Current reporting mechanisms are failing children especially:

- Research published by the Children's Commissioner for England found that 40% of children who didn't report harmful content didn't because they felt there "was no point in doing so". Almost a third (30%) said they didn't know how to report and 25% said they didn't know the content could be reported. Only 15% felt that the content didn't need to be reported.
- The research found that often children's reports are not acted upon by platforms. Only 63% of children said the content they had reported was removed, with 25% seeing no action on their reports and 10% weren't sure whether anything happened as a result of their report. ([link](#))

There is clear support for independent appeals as part of the Online Safety Bill.

Today the current [Video Sharing Platform Regulations](#) requires ([notified](#)) platforms 'to provide for an impartial out-of-court procedure for the resolution of any dispute between a person using the service and the provider to operate impartial dispute resolution in the event'.

Ofcom have reported on the first year of this regulation and highlighted that the requirements imposed on platforms in scope are not being met in full currently. This is shown in VSP responses to Ofcom's information requests the summary of which found:

- Whilst some platforms made changes to their measures in direct response to being regulated under the regime, platforms generally provided limited evidence on how well their safety measures are operating to protect users.
- Some platforms are not sufficiently prepared and resourced for regulation and are not prioritising risk assessment processes currently.

This highlights the importance of explicitly spelling out what is expected of platforms in scope of the OSB as, even when the explicit requirement around independent appeals is in place, platforms are still failing in the duty to comply with this.

The Online Safety Bill will supersede this current regulation and its included obligations. This will include the removal of the current obligations on notified platforms to provide an independent appeals system.

In addition, the recent [Public Accounts Committee](#), highlighted that it could be years before the public saw any demonstrable change in their online lives.

*"Ofcom prepared well for its new responsibilities, and moved swiftly to implement the OSA when it became law in October 2023. But the PAC warns of potential public disappointment with the new regulatory regime, which will not be fully implemented until 2026, if people cannot quickly see improvements to their online experience or understand how complaints are acted on. With Ofcom able only to take action where there are systemic concerns about a service provider, the report recommends it develop a mechanism for letting people know what impact their complaint has had".*

*Dame Meg Hillier MP, Chair of the Committee, said:*

*"Expectations are understandably high for firm guardrails in the hitherto largely unregulated online world. We know that around two thirds of UK children and adults say they experienced at least one potential online harm in a month in 2022, according to*

*Ofcom, which is to be commended for how swiftly it has moved to take on its new responsibilities. It must now continue to be proactively frank with the public over what the Online Safety Act does and does not empower it to do, lest confidence in the new regime be swiftly undermined.*

*Firm detail on how fees for industry, enforcement, automated monitoring and a range of other issues must now be locked in. No other country has introduced equivalent online safety regulation. Ofcom now needs to capitalise on its early progress. It must also accelerate its coordination with other regulators both at home and overseas, in the recognition that it is at the forefront of a truly global effort to strike the right balance between freedom and safety online.”*



Ofcom agreed to undertake a review of whether an independent appeals process is required as part of the Online Safety Act. This review has not yet commenced therefore leaving victims unable to redress.

## SWGfL Response to Volume 4

*What should services do to mitigate the risk of online harms?*

### Overarching approach to developing illegal content Codes of Practice

SWGfL does not fully agree with the overarching approach to developing the illegal content Codes of Practice. The approach might benefit from reconsidering its stance on smaller platforms. In our experience, some of the most harmful content can manifest on these smaller platforms. Exempting them from the more stringent measures may inadvertently overlook the riskiest online environments, potentially allowing harm to proliferate unchecked. This gap highlights the need for a more inclusive regulatory framework that extends oversight across all service sizes without imposing undue burdens on smaller entities.

In our experience, we have observed that the most harmful content often finds its way onto the smaller platforms. In 2023 nearly half of cases reported to Report Harmful Content encompassed violent, pornographic and self-harm/suicide-related content, with over 50% of that content on smaller platforms outside of Report Harmful Contents remit. These platforms bearing names such as “watchpeopledie”, “sanctionsuicide”, “mrdeepfakes”, and “zoovilleforum” have become popular places

for this type of violent content. Please find attached Annex listing a sample of sites reported to SWGfL Report Harmful Content service. A significant case recounts a scenario where a website hosted explicit instructions on suicide methods, actively encouraging users to take such drastic actions. Shockingly, this content could be accessed without the need for an account, thus making it easily accessible to anyone, including minors. This website has been directly linked to numerous tragic instances of deaths and attempted suicides. The real-world harm involved when viewing content can leave a significant mark on an individual's emotional well-being. For this reason, it is essential to emphasise that the size of the platforms does not necessarily correlate with the level of harm inflicted or the illicit nature of the content. Therefore, exempting smaller platforms from the most onerous measures will eliminate oversight of the most harmful online environments, fostering an unchecked breeding ground for potential harm.

Enhancements to this approach could include clearer compliance guidance for smaller platforms, ensuring they too can uphold safety without disproportionate strain. Collaborating with organizations like SWGfL, which have firsthand insights into evolving online harms, could provide valuable strategies for mitigating risks across the digital landscape, ensuring a safer online environment for all users, especially given that vulnerable groups can be disproportionately affected by unchecked harms on smaller platforms.

It is also critical to highlight that women are disproportionately impacted by certain online harms, including harassment, intimate image abuse, and gender-based violence. This aspect needs more nuanced consideration within the Codes of Practice. We suggest incorporating guidance that recognizes and addresses the ways in which online harms disproportionately affect women and girls. It is also vital for Ofcom to partner with online safety organisations, including SWGfL, could provide valuable perspectives on evolving online harms and effective mitigation strategies, particularly those impacting women disproportionately.

The proposed definition of "large services" as those with over 7 million monthly UK users, while straightforward, again doesn't fully align with our understanding of the complexities of online harms. This definition, focused primarily on user numbers, overlooks the nuanced reality that the size of a platform isn't directly correlated with the level of harm it may facilitate. In fact, our experience of operating the SWGfL Helplines, indicates that some of the most harmful content and behaviours can proliferate on smaller platforms. These environments, due to their size, may lack the scrutiny and oversight applied to larger counterparts, potentially becoming hotspots for illegal content and harmful activities.



Additionally, focusing on size alone might lead to a regulatory blind spot, ignoring the specific nature and context of the illegal content across different platforms. By not considering the unique risks posed by the content and the platform's operational and contextual factors, the regulation might not adequately protect users or might inadvertently impose measures on platforms that, despite their large user base, have effective harm mitigation strategies in place.

### Hashing and detection

While the focus on hash matching for Child Sexual Abuse Material (CSAM) is critical, extending this technology to other forms of illegal and harmful content, such as terrorism, Non-Consensual Intimate Images (NCII), and extreme pornography, is equally important. This broader application acknowledges the varied nature of online harms and ensures a more comprehensive approach to safeguarding users. Similarly, the reporting and complaints section, which currently includes 'CSEA, Terrorism and Other duties,' should explicitly mention duties related to NCII, extreme pornography, and other significant harms. This specificity will help ensure that platforms have clear guidelines on the breadth of content that requires vigilant monitoring and response, closing any potential loopholes that could leave users exposed to harm. These enhancements would not only improve the clarity and effectiveness of the Codes but also reflect a more nuanced understanding of the online risks users face, promoting a safer internet environment for all.

Technological developments should be used to protect children as a priority, however, this should not mean that those developments should not be applied equally to adults where possible.

In 2021, SWGfL worked with Meta to develop the StopNCII.org platform which allows adults to create hashes of their intimate images to stop them being shared without consent on participating platforms. StopNCII.org is currently protecting over 500,000 individual images from being shared across our 9 participating platforms: Facebook, Instagram, Threads, Reddit, Bumble, TikTok, OnlyFans, Aylo (ex MindGeek inc Pornhub) and Snap. We have actively blocked over 11,000 NCII images from being shared.

Our current partners have reported that implementation is straightforward, building, as it does, on pre-existing technologies that identify CSAM and terrorist content. There are therefore few and limited barriers to platforms adopting the technology. We strongly encourage Ofcom to make participation in StopNCII.org mandatory for platforms.

While we appreciate that the burden on smaller platforms can be more significant, StopNCII.org provides support for smaller platforms with technical implementation from our internal web team, and potentially also from our larger existing partners. We plan to add different types of hash to the process to increase the number of platforms who can join and increase the protection to users. Multiple hash types also give greater protection to users by increasing accuracy and improving identification where some editing of images has occurred.

### Trusted Flagger routes

It is essential that platforms of all sizes implement effective and easy-to-navigate reporting routes for users to report illegal and harmful content. Users must be able to seek support where they do not receive a reporting outcome that they are satisfied with. Platforms should therefore establish a Trusted Flagger route for appropriate support services (such as Report Harmful Content and the Revenge Porn Helpline) to escalate reports swiftly and efficiently. Please find attached the Annex Trusted Flagger Guidelines.

### Alternative Dispute Resolution

The absence of a structured approach to alternative dispute resolution (ADR) in the proposals is a significant missed opportunity to enhance user trust and platform accountability. ADR can offer several benefits, including reducing the burden on formal complaints processes, fostering a more positive relationship between platforms and users, and potentially resolving conflicts in a way that respects the interests of all parties involved. Furthermore, ADR mechanisms such as mediation, arbitration, or ombudsman services can provide a level of expertise and neutrality that might not always be present in platform-driven complaints procedures.

SWGfL recommend that the proposals could be improved by explicitly incorporating ADR mechanisms into the platform's arsenal for addressing complaints and disputes. An outline of an ADR solution SWGfL previously proposed can be found in volume 3 above. This could be accompanied by developing specific guidance or standards for ADR mechanisms in the context of online harms, including criteria for mediators or arbitrators and processes that ensure fairness, transparency, and accessibility. While the proposals in Chapter 16 provide a framework for reporting and complaints, integrating ADR mechanisms could significantly enhance the effectiveness, accessibility, and user trust in these processes. Drawing from SWGfL's expertise in online safety, it is clear that ADR can play a crucial role in the broader ecosystem of online harm reduction and dispute resolution.

## SWGfL Response to Volume 5

### *How to judge whether content is illegal or not*

Broadly, we agree that the proposal clearly outline how services can assess and mitigate the risks of illegal content, provide clarity on the criteria for such assessments, and offer a structured approach to decision-making are likely to be supportive of Ofcom's overarching goals.

We are supportive of the 'Adult image-based sexual offences' noted in volume 5, and we are pleased to see the strengthening of the intimate image abuse laws in England and Wales. There is, however, a noticeable absence of attention paid to the obligation of service providers removing non-consensually shared intimate content which has been reshared, since the original offence. The guidance's current stance, suggesting no mandatory action for service providers upon notification of non-consensual image sharing, is concerning. Relying on platforms' voluntary compliance is insufficient, as history shows delayed or inconsistent responses have significant impact to adults affected by intimate image abuse. It is imperative that platforms are strongly mandated to remove any known non-consensual images to prevent further harm effectively. Content that is shared and reshared multiple times exacerbates harm to the victim. Sites whose business models rely on this content attract motivated users who will persist in resharing and downloading to reshare again causing sustained harm to victims. Multiple reshares of NCII content amplify the trauma and platforms should be mandated to remove subsequent shared content as quickly as the first.

The guidance should also consider the mandatory onboarding to the StopNCII.org platform, operated by SWGfL, as mentioned in our response to volume 4, to strengthen the content detection processes. Whilst the importance of hashing and detection of CSAM is focused on in the guidance, the same considerations for other priority offence content, such as non-consensually shared intimate images, should also be considered strongly.

We are also pleased to see animal welfare mentioned in the current guidance (26.279) and will be pleased to apply our expertise to future consultations on this. The SWGfL Report Harmful Content service has seen a significant rise in animal abuse reports (including bestiality) across social media channels, including Facebook and X, since November 2023. Much of this content, which is often distressing to watch, usually involves monkeys being physically and psychologically hurt and mistreated. Concerningly, Report Harmful Content has found that alongside much of this content,

many viewers have actively engaged in and encouraged the torture of monkeys, revealing a concerning trend across global social media platforms.

## SWGfL Response to Volume 6

### *Our information powers, enforcement powers and approach to supervision*

While the guidance's structured approach and Ofcom's emphasis on reasonableness and proportionality are commendable for guiding services through the regulatory landscape, it is essential to highlight the need for transparency, independent assessments, and Ofcom's evaluation of the guidelines once implemented. The current approach could be significantly improved by mandating transparency in how services conduct and report their risk assessments, ensuring accountability and public trust. Independent entities should be involved in conducting these assessments to offer unbiased evaluations of the services' compliance with their obligations. This would not only enhance the credibility of the assessments but also ensure a more diverse perspective on risk management. As previously mentioned in our response to volume 3, SWGfL do not believe that internal monitoring is sufficiently independent.

Finally, it is crucial for Ofcom to actively evaluate the effectiveness of these guidelines in practice, adapting them as necessary to ensure they remain relevant and effective in a rapidly evolving online environment. This iterative process, coupled with stakeholder engagement and feedback, will be key to refining the guidance and ensuring it effectively protects users, especially vulnerable groups, from online harms.