

The definition of pornography in the legislation “Pornographic content means content of such a nature that it is reasonable to assume that it was produced solely or principally for the purpose of sexual arousal” is unfortunately quite subjective. The associated guidance already gives rise to potential objections to whether e.g. topless content or lingerie ads combined with a hashtag such as “horny”, or a model in a video making suggestive (define?) sounds suddenly qualifies a specific piece of content as pornographic. Guidance such as “Any content focusing on the breasts, genitals or buttocks or depicting full frontal nudity” resembles more closely an extract from the terms of use of Facebook\Instagram than a widely understood definition of pornography.

We feel that the general public’s understanding of pornography is that it is sexually explicit content. People “know it when they see it” to paraphrase the quote. There is popular support for measures to prevent children from accessing pornography, but there is a risk that if regulators seek to extend the generally understood definition of pornography, or to include content that most reasonable people would not define as pornographic, they will be seen as restricting speech and may spend valuable resources policing content and services which should not be in scope and engaging in ongoing discussions\adjudications\appeals about what’s in\out of scope.

As well as regulators, the regulated services also require clarity in the regulations. We need to inform uploaders and train content moderators and AI tools as clearly as possible in what is acceptable and what is not to achieve consistent results. For this reason, I believe the issue of “context” should be very much downplayed. In the vast majority (all?) of cases, a piece of content is either pornographic in its own right, or it isn’t. Whether it is viewed on a website in conjunction with other adult content, or on a social media site, or even a standalone blog post should rarely, if ever, change the categorisation of that piece of content. The issue of context can be considered, but it should be the exception rather than the rule.

We suggest that OCFOM use a tighter interpretation of the definition and focus on clearly sexually explicit material when categorising content as pornographic, at least in the initial stages of the regulations. If valid reasons are presented by interested parties in future as to why certain additional content types should also fall under the definition of pornography rather than being considered closer to the “suggestive” end of the scale, OFCOM can inform industry of its updated views at that time in the course of normal industry briefings.

Starting from the point where there is more unanimity on what is considered actually pornographic content is in everyone’s interest and will avoid much unnecessary debate. Better to begin with a slightly narrower focus and expand if necessary, than to cast the net so widely that it is both controversial and unmanageable in practice.

Best regards