

Your response

Ofcom's Register of Risks

Question 1:

- i) Do you have any comments on Ofcom's assessment of the causes and impacts of online harms?

Response:

SMACC generally agrees with Ofcom's assessment of the causes and impacts of online harms. SMACC is pleased to see the many sensible conclusions Ofcom has come to regarding the impact of animal cruelty content on the viewer and the many different ways the content can be shared online, and lead to further harms to viewers and animals. However we are disappointed that this appears to not have led to clear regulations to tackle most of these impacts. It appears at present that very little animal cruelty content will be captured under Ofcom's draft regulations, in particular when the suggestion is to de-prioritise pre-recorded animal cruelty content. SMACC understands that Ofcom needs to take care not to over-regulate or impact on free speech, however the recommended regulations do very little to actually protect people from witnessing harmful animal content.

See below questions for further detailed answers.

- ii) Do you think we have missed anything important in our analysis? Please provide evidence to support your answer.

Response: See above

In addition to the points stated above, the regulations are focused on capturing obscene material under the Communications Act. Despite SMACC appreciating the effort of Ofcom to capture many of these online harms, we believe that Ofcom has missed a large area of harmful content which is not classified as obscene, e.g. fake rescue videos, using animals as photo props, treating macaques like children and forcing them to wear clothes and take baths, teasing, ect. These types of content are not classified as obscene, but they are harmful to the viewer as it may encourage or incite people to commit animal cruelty crimes to replicate content they have seen online, with the incentive being attention and monetisation. These types of content are also harmful as they desensitise viewers to animal cruelty and this may lead them to seek out more extreme material, or create similar material to what they have seen, as these can be monetised (evidence: SMACC (2021) *Making Money from Misery*, pg.60).

- iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

Response: No

Question 2:

- i) Do you have any views about our interpretation of the links between risk factors and different kinds of illegal harm? Please provide evidence to support your answer.

Response:

SMACC agrees with Ofcom's interpretation of the links between risk factors and different kinds of illegal harms. We believe, however, that this could be emphasised further given the large body of evidence available, and previously provided by SMACC and other respondents, on the links between animal cruelty and domestic abuse, child abuse, extreme pornography and other violent crimes. Also important is the use of online services as a key tool used to commit other animal cruelty crimes offline, such as badger baiting, as documented by the National Wildlife Crime Unit (evidence previously submitted to Ofcom via email from SMACC). There also seems to be a disconnect between risk factors and illegal harms regarding animal cruelty content which is not classified as obscene.

- ii) Is this response confidential? (if yes, please specify which part(s) are confidential)

Response: No

Service's risk assessment

Question 3:

- i) Do you have any comments on our approach to amending the draft Risk Profiles or our proposed risk factors for animal cruelty?

Section 5: "Summary analysis for animal cruelty offences: How harms manifest online, and risk factors" should include encrypted messaging, reposting or forwarding of content, hyperlinks and recommender systems.

Section 7: "Service Risk Assessment Guidance and Risk Profiles"

SMACC agrees with the inclusion of animal cruelty as a priority form of harm, and the inclusion of animal cruelty in the reference list of illegal offences. As with all forms of illegal and harmful content covered by the Act, we agree that services should carry out Illegal Harms Risk Assessments including animal cruelty content.

We also agree with the proposal to add animal cruelty to the risk factors associated with U2U services.

However SMACC would also suggest it be explicitly included in:

- 1e Discussion forums and chat rooms
- 1g File-storage and file-sharing services
- 3b Services where users can post anonymously
- 4a Services with user connections
- 5a Services with live streaming
- 5b Services with direct messaging
- 5c Services with encrypted messaging
- 5g Services with re posting or forwarding of content
- 7a Services where users can search for user-generated content
- 7b Services with hyperlinks

- 8 Services with recommender systems

Direct messaging, in particular encrypted messaging, is one of the most common ways that cruelty perpetrators communicate to coordinate harm and share content. This is directly linked to hyperlinking, as often links to encrypted chat platforms such as Telegram will be found on public pages showing monkey abuse content. Such links go directly to monkey torture groups that are active on Telegram. These groups brainstorm extreme torture methods, and then collect money from members to commission people in Indonesia and other countries to carry them out. The goal is to create videos in which baby monkeys are tortured and killed on film. Two women in the UK are currently awaiting sentencing after pleading guilty to their involvement in one such group (<https://www.bbc.co.uk/news/articles/c74lwnz4wlwo>).

However, this does not just involve encrypted platforms. Hyperlinks to non-encrypted platforms that have animal torture content available for viewing is also promoted on public pages. We also see a lot of cruelty content shared via reposting on many different accounts and channels.

In SMACC’s experience, content recommender systems on social media platforms are a gateway to harmful animal cruelty content. Often engaging with positive animal content can lead users to harmful content via content which is recommended to them. For instance, searching for content featuring monkeys very quickly brings users to content showing monkeys kept as pets in inappropriate conditions, which in turn leads to more extreme forms of content. In SMACC’s recent report (to be published October 1st 2024) we found 605 links that showed “fake rescue” content (content in which animals are intentionally placed in dangerous or harmful staged situations so the creator can film themselves “rescuing” the animals). Almost 22% of these links appeared to our researchers via the algorithmic recommender system on a number of platforms, after watching other fake rescue content. Generally it is understood that algorithms on social media platforms do not discriminate between positive or negative forms of engagement, but rather any form of engagement can lead to the further promotion of the content.

As a supplementary point, fake rescue content is often used to mislead the public into sending money to the creator, in the form of a “donation”, as they believe they are supporting genuine animal rescue. This should presumably be a Schedule 7 priority offence under Section 2 of the Fraud Act 2006. In SMACC’s report previously mentioned, 21% of fake rescue content included an ask for donations, either on the content itself or on the main account.

ii) Please provide the underlying arguments and evidence that support your views.

Response: See above

iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

Response: No

Question 4:

i) Are the draft Risk Profiles for illegal content sufficiently clear in presenting the relationships between the risk factors and the risk of harm posed by animal cruelty content?

Response: Yes.
ii) Please provide the underlying arguments and evidence that support your views.
Response: None
iii) Is this response confidential? (if yes, please specify which part(s) are confidential)
Response: No

Question 5:
i) Do the draft Risk Profiles for illegal content include the risk factors that are most strongly linked to the risk of harm posed by animal cruelty content?
Response: Yes, in a broad sense.
ii) Please provide the underlying arguments and evidence that support your views.
Response: None
iii) Is this response confidential? (if yes, please specify which part(s) are confidential)
Response: No

The Illegal Content Judgements Guidance (ICJG)

Question 6:
i) Do you agree with our proposals? Please provide the underlying arguments and evidence that inform your view.
Response: No. As mentioned above, SMACC does not agree with the draft regulations outlined in this document. We believe that the Animal Welfare Act (AWA) can be legally utilised to capture a greater range of animal cruelty content under the Act, and that Section 127(1) of the Communications Act should be used in addition, not instead of the AWA to tackle animal cruelty content. Ofcom have done an excellent job of researching and acknowledging the harms to viewers and the risks to animals in this documentation, but the proposed regulations appear to fall short of preventing those harms. While Section 127(1) of the Communications Act might be appropriate for some situations, we argue that in most cases, the dissemination of pre-recorded animal cruelty content should be considered as priority offences. SMACC does not agree with Ofcom’s conclusion that “the publication online of content relating to or depicting these offline acts does not in itself cause the animal unnecessary suffering (or further suffering) and therefore cannot constitute an offence under the Animal Welfare Act.” (5.4). It is our view that this interpretation is based on an unnecessarily narrow consideration of when animal cruelty content would constitute an animal cruelty offence under Section 4(1) of the Animal Welfare Act 2006.

In many instances of animal cruelty content, animals are only subjected to the abusive act in order for the perpetrator to film it, whether it be pre-recorded and uploaded after the fact, or if it is live-streamed. The content is therefore inextricably part of the offence. It is clearly showing an illegal, and harmful act that should not be viewed by online users. In point 3.9, Ofcom outlines the specific circumstances under which cruelty content can be an offence under the Act, namely “the offences of encouraging a priority offence, assisting a priority offence or conspiracy to commit a priority offence are all priority offences in their own right. These offences can be committed online in the form of content.” SMACC argues that much cruelty content does in fact meet this criteria, the very nature of the actions in the content having been devised and filmed for another person to view and consume. Indeed Ofcom confirms in the consultation document that “For content to be considered illegal, the conduct only needs to be ‘capable’ of encouraging or assisting.” (9.61). The content itself can encourage other creators to create and publish animal cruelty content when they see it garners attention and generates revenue. Just because other users have not explicitly said they are inspired to create animal cruelty content, the volume of this type of content online heavily implies that people are being inspired to take part.

Further to this, if related only to the cruelty taking place offline and not the content itself, SMACC then presumes if the content is shared by others who have not been part of making the content (i.e. committed the offence), that these instances of the content would be allowed to remain on the platform. This of course does not prevent harm to the viewers. The purpose of the Online Safety Act is to safeguard the users of online services, and particularly children (noting also that General Comment 26 of the UN Convention on Rights of the Child (CRC), to which the UK is a signatory, requires that 'children must be protected from all forms of physical and psychological violence and from exposure to violence, such as domestic violence or violence inflicted on animals' – and that the Online Safety Act represents an opportunity to ensure the UK fulfils its obligations under the CRC in respect of online content involving violence inflicted on animals). It is clear from the statements made during the passage of the Online Safety Bill through parliament that the intention of policy makers was to include animal cruelty among the types of harms outlined in Part 5 of Ofcom’s consultation document. The potential for animal cruelty content to cause harm to the viewer is clearly the same, whether the content is live streamed or pre-recorded.

In addition, in previous evidence SMACC has outlined how the viewing of animal cruelty content can indeed lead to viewers carrying out cruelty acts, such as the keeping of certain wild animals as pets in unsuitable conditions.

Legal advice sought by SMACC provides a greater understanding of the application of the animal cruelty offence in section 4 of the Animal Welfare Act 2006. It is unclear why Ofcom considers that the cruelty must be livestreamed to constitute an offence under the 2006 Act. Those responsible for causing unnecessary suffering to animals under s4(1) of the 2006 Act may be held to account after the suffering has occurred. Offenders have been successfully prosecuted when material has latterly emerged on video and prosecutions are routinely brought when the animal is deceased and therefore no longer suffering. We therefore urge Ofcom to propose in its guidance that, when considering whether animal cruelty content should be considered a priority offence, the acid test should be whether the material depicts conduct which constitutes an offence under section 4(1) of the Animal Welfare Act, and whether the suffering was unnecessary, regardless of when the suffering was inflicted.

In addition, in its consultation document Ofcom acknowledges that some depictions of animal cruelty or suffering "are necessary in a democratic society" in order to inform the public of its existence for the purposes of campaigning for greater animal protection. By definition, any depictions of animal cruelty that are not legitimately designed to inform the public in this way should be considered illegitimate, designed to appeal to and "entertain" particular audiences, and potentially encourage them to engage in animal cruelty, and thus should be considered as priority offences for the purpose of the Act.

So while Section 127(1) of the Communications Act might be appropriate for some situations, we argue that in most cases, the dissemination of pre-recorded animal cruelty content should be considered as priority offences.

SMACC is also concerned that considering cruelty content as a "non-priority offence" is effectively downgrading such content, which may cause it to be treated as less serious by online services. This is evidenced by the fact that there are different regulatory duties for the different levels of priority offences as outlined by Ofcom (as stated in Par 2.3 of the consultation document, 'under the Act, the duties of providers are more stringent for priority offences'). As online services will use the guidance to ensure their compliance with the Act, we are seriously concerned that they will use these to become compliant, and make little effort to bring in additional stricter rules on animal cruelty content. In SMACC's work we have had very mixed responses from platforms, with some refusing to make any changes that are not strictly required.

This also goes against the decision by Parliamentarians to include cruelty content explicitly as a priority offence. Also, SMACC has concerns about the effectiveness of the Communications Act, given that there seem to be no cases in which the Act has been successfully used to prosecute instances involving such content. Ofcom has stated that the threshold is "high" for the Communications Act, which means there is a risk that only the very most severe and graphic content will be captured under the Online Safety Act, if this mechanism is used in isolation. As noted above and below, there have in fact been successful prosecutions under the Animal Welfare Act in relation to acts of animal cruelty that were pre-recorded and subsequently distributed online.

SMACC is concerned about the resulting limited scope of the regulations on capturing animal cruelty content, and the subsequent limited forms of cruelty content that will be captured by the Act, if Ofcom's proposals are carried forward. Not all animal cruelty content would come under the definition of "obscene" (as per the Communications Act), and despite showing significant forms of animal cruelty, would therefore not be captured - for example, fake rescue content which shows animals placed in dangerous and harmful situations, in order to be "rescued" on film. Indeed, two major social media platforms, YouTube and Meta, both already have specific policies against this form of cruelty content, demonstrating that it is possible for online services to recognise it. A report due to be published by SMACC on October 1st on Fake Rescue outlines key criteria for identifying such content, which could be used by platforms. In addition we have concerns that some sexually exploitative content involving animals may not be identified as such, such as the dressing of macaques in clothing and make-up or the depiction of animal genitals. Further, the keeping of primates as pets is now prohibited under UK law, aside from certain cases

where a licence may be granted, yet we see a great deal of content showing monkeys kept as pets in all manner of unsuitable conditions. [Keeping primates as pets banned - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Ofcom's point 9.28 "We propose to explain that unnecessary suffering may be of a physical or mental nature and may arise from a person's action or their inaction" does indeed cover a more broad definition of animal cruelty and suffering.

SMACC has previously provided Ofcom with extensive evidence of the range of animal cruelty content found commonly on social media platforms. SMACC recognises that Ofcom has to balance what is reasonable to expect the online services to confidently assess and remove. However, SMACC has already been working with some major social media platforms on animal welfare policies and has demonstrated some of what can be reasonably expected. Recently, a newly established platform has been in contact with SMACC to ask for guidance on animal cruelty content and we are providing them with guides to different forms of cruelty content and how their moderators can spot this. A lot of this will be standard, straight forward signs of animal abuse, which all platforms could reasonably seek out as part of their requirements under the Act.

Regarding the definition of the kinds of animals caught by the animal cruelty offence, we consider that the definition in Section 2(b) of the Animal Welfare Act 2006 ("an animal ... under the control of man whether on a permanent or temporary basis") provides a clearer and more practical definition. Paragraph 9.58 should include this definition in full (it currently only refers to animals under the control of a person on a permanent basis).

Point 9.81:

We object to Ofcom's proposed exception in section 9.81: "...it is likely to be reasonable to infer that content is obscene where it graphically depicts what appears to be the real: deliberate killing or serious injury of humans or animals for no good reason (*except* where such killing or serious injury is otherwise lawful, for example in war or food production);" There is no justifiable reason why obscene depictions of animal cruelty and suffering in the course of food production should be exempted and legitimised for online consumption. The exemption may also create contradictions with the priority offence under the Animal Welfare Act (2006). For example, a farmer encouraging another farmer/s to engage in tail cutting of piglets *en masse*, would be guilty of an offence under the Welfare of Farmed Animals Regulations, 2007, but conceivably the posting of a recorded video depicting routine tail docking could be defended as part of "typical food production" in the UK. Furthermore, the types of animals used in "food production" and the ways in which they are treated and slaughtered varies widely worldwide, which may mean that certain highly objectionable forms of cruelty content may find their way onto social media in the UK.

Point 9.84:

We appreciate that in section 9.47 Ofcom proposes clarifying that content for the purposes of "political campaigning" should not be interpreted as illegal content under this offence. However, we do not consider that the proposed guidance under section 9.84 offers sufficient clarity that it would *not* usually be reasonable to infer that content is obscene when it is posted in the course of campaigning for the protection of animals. We recommend adding an additional bullet point to the list of examples where content is not likely to be determined to be obscene:

ii)	“animals who have experienced or are experiencing suffering where clearly shared in the course of educating and enabling the public to act to prevent such situations from occurring.”
iii)	Please provide the underlying arguments and evidence that support your views.
Response: See above	
iv)	Is this response confidential? (if yes, please specify which part(s) are confidential)
Response: No	

Question 7:

- i) Do you consider the guidance to be sufficiently accessible, particularly for providers with limited access to legal expertise?

Response:

SMACC is concerned that Ofcom’s guidance, specifically, point 9.65, is at odds with what the Government stated in its amendment to the Bill: <https://www.gov.uk/government/news/online-animal-cruelty-activity-to-be-removed-from-social-media-platforms> “It also means even if the activity takes place outside the UK but is seen by users in the UK, tech companies will be made to take it down as part of a zero-tolerance approach”.

Ofcom states in 9.65: “However, for the purposes of this guidance, content should be considered illegal if either:

- a) the animal cruelty offence concerned is taking place in the UK, or
- b) the animal cruelty offence is to be committed by someone who is British, or
- c) the animal cruelty is taking place in any other country where animal cruelty is an offence.”

In SMACC’s meeting with Ofcom regarding this, Ofcom stated that it had worked on the assumption that most countries would have similar animal welfare laws so this content would likely be captured as an offence, no matter where it is created. However, this is inaccurate and indeed, many countries lack suitable and effective animal welfare laws, and in some cases, no animal welfare legislation is present at all. In countries where the long-tailed macaque, the primate species most often abused to make torture videos, is indigenous, there is usually very little legal protection afforded the species. For example, in Indonesia, the country most associated with the creation of monkey torture videos, neither the long-tailed macaque and pig-tailed, another primate species also abused to make torture videos, are on the national list of protected species relating to Government Regulation No. 7, 1999, and, therefore, do not receive the same consideration by wildlife authorities as those species that are on the list. See: The Macaque Report: Indonesia’s Unprotected Primates: www.macaquecoalition.com/macaque-report-2022

Further to this, SMACC is unclear how Ofcom has reached the conclusion in point 9.34: “In the case of the encouraging, assisting and conspiring offences, the animal cruelty offence being

encouraged, assisted or conspired to etc would need to be an offence which was somehow within the territorial jurisdiction of the UK courts.”

Two women in the UK are currently waiting to be sentenced. They were charged with and pleaded guilty to causing unnecessary suffering to a protected animal (causing, consuming and facilitating the torture of monkey) to create videos to distribute online. The monkeys who were tortured and killed were in Indonesia and not within the territorial jurisdiction of the UK courts. Find out more: <https://www.bbc.co.uk/news/articles/c74lwz4wlwo>

ii) Please provide the underlying arguments and evidence that support your views.

Response: See above

iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

Response: No

Question 8:

i) What do you think of our assessment of what information is reasonably available and relevant to illegal content judgements?

Response:

As mentioned previously, SMACC has released several reports which can be used as guidelines for social media platforms to use when updating their policies.

ii) Is this response confidential? (if yes, please specify which part(s) are confidential)

Response: No.

This submission is supported by:

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