



The British  
Psychological Society  
Professional Practice Board

# Access to Sexually Explicit Illegal Material for the Purpose of Assessment, Intervention and Research

Printed and published by the British Psychological Society.

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## Purpose

This position paper outlines professional practice framework for psychologists who require access to sexually explicit illegal material as part of their professional duties.

## History and legal context

The rapid growth of the internet and advances in technology has radically changed how sexually explicit illegal materials are reproduced and disseminated. The technological ease of production, lack of expense and anonymity in obtaining and distributing illegal material has resulted in an exponential increase in the availability, accessibility and volume of sexually explicit material on the internet (Glasgow, 2010; Macpherson, 2012). The majority of websites are hosted outside of the UK and are therefore difficult to control and a multifaceted response to preventing access to illegal material via the internet has not yet emerged (Internet Watch Foundation, 2014).

## Cross-divisional working party

The Professional Practice Board's Cross-divisional Working Party on the Assessment of Offenders Who Have Accessed Sexually Explicit Illegal Materials on the Internet sought to reach a consensus and offer guidance for psychologists on the issues of accessing sexually explicit materials for research purposes, risk assessment and intervention with offenders, and to protect psychologists whose legitimate duties expose them by necessity to potentially illegal materials.

# Reasons for accessing illegal material

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The initial research on internet offenders found that possessors of illegal images used the material to validate their sexual interest in children, to groom children and lower their inhibitions, or to blackmail victims or other offenders. Other offenders were motivated to collect child pornography out of curiosity, for sexual arousal or for other reasons, including financial motivation or the ‘status’ perceived to be associated by possessors with a substantial collection (Quayle & Taylor, 2001).

The usage of internet pornography sites is an important facet of online sexual activity (Brand et al., 2011) and a developing theme concerns the number and content of images as important in potentially distinguishing between types of offender (Webster et al., 2011). Typologies of images have been developed by the Combating Paedophile Information Networks in Europe (COPINE) project to aid the understanding of specific sexual interests (Taylor et al., 2001). Opinion suggests that the opportunity for psychologists to view sexually explicit material may enhance understanding of the sexual interests of the offender and overcome their tendency to deny or underreport the content of what they have (Bushman et al., 2010). Glasgow (2010) noted that access to sexually explicit material presents a ‘golden opportunity’ to assess unequivocal evidence of sexual interests for the purposes of risk assessment and intervention with offenders.

## Access for research purposes

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To enable the continued development of psychologists’ understanding of the sexual interests of the offender, researchers may need to be granted access to illegal material. The *Memorandum of Understanding Between Crown Prosecution Service (CPS) and the Association of Chief Police Officers (ACPO) concerning Section 46 Sexual Offences Act 2003* includes a specific section on ‘special agreements’ outlining how to obtain

permission to access such material. Provided the conditions for access are adhered to, such activities would not be subject to a criminal investigation as it would not be in the public interest to prosecute. Researchers are therefore advised to follow the guidance provided to ensure that they do not leave themselves open to potential criminal investigation.

Members of the Society should also ensure that they follow the guidance set out in the *Code of Human Research Ethics*.

## Psychologists and risk assessment

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The availability of illegal material has spawned a category of non-contact sex offenders whose offences involve the accessing and downloading of sexually explicit materials, yet for whom there presently exists no well-developed risk assessment procedure with established predictive validity. There remain gaps in professional knowledge with respect to the extent and type of possessors of sexually explicit material and whether they share most or all of the characteristics of other types of sex offenders. Quayle & Taylor (2002)<sup>6</sup> analysed the ways in which men convicted of downloading pornography talked about child sex abuse images and what function this played in their accounts. These explanations include images as a means of sexual arousal, collection of images as a means of facilitating social relationships, and use of images as ‘therapy’; that is to say, as a means of controlling deviant urges. Seto et al. (2006) suggest that:

*‘People are likely to chose the kind of pornography that corresponds to their sexual interests, so relatively few non-paedophilic men would choose illegal child pornography given the abundance of legal pornography that depicts adults.’* (Seto et al., 2006, p.11)

An issue for psychologists engaged in risk assessment is determining those non-contact offenders who will go on to commit contact sex offences. Macpherson (2003) noted that contact and non-contact offenders could be distinguished through age of onset

of offending, sexual deviance, and affective and interpersonal characteristics of psychopathy. There is emerging evidence distinguishing online sexual offenders from those who also commit contact offences (Elliott et al., 2013; Webb et al., 2007). Quayle and Taylor (2003) suggested that internet offenders commonly limit their offending behaviour to non-contact behaviour. Glasgow (2010) noted that internet offenders may constitute a heterogeneous group, the majority of whom do not progress towards contact offending. The meta-analysis by Seto et al. (2011) found low levels of officially reported contact offending in samples of online sexual offenders.

Psychologists working in forensic settings are increasingly instructed to provide risk assessment reports for offenders who have accessed illegal materials and this has posed challenges for psychologists attempting to decipher relevant factors in any specific case. This may involve expert opinion on an offender's risk of future production, distribution or use of such material.

## Definitive guidelines

The number and content of images stored appears to be important in distinguishing internet offenders (Surjadi, et al., 2011) and typologies of images have been developed by the Combating Paedophile Information Networks in Europe (COPINE) project to aid the understanding of specific sexual interests (Taylor et al., 2001). Recent guidance from the Courts, in particular the case of HM Advocate v. Graham [2010] HCJAC 50 in Scotland and the 2002 case of R. v. Oliver (2003) 2 Cr. App. R. (S) in the Court of Appeal in England, suggests that 'in sentencing for offences of this kind, reference to the COPINE scale is no longer appropriate' (at para. 29). Instead, reference was made to the *Sexual Offences Act Definitive Guideline* (2003), which outlines a scale by which child sex abuse images could be 'graded' or ranked on a sliding scale of severity from one to five, ranging from semi-nude/nude photographs (level 1) through to penetrative sexual assault (level

4) and sadism or bestiality (level 5). The five point scale, established by the Sentencing Guidelines Council for England & Wales and adopted in 2002, was known as the SAP Scale, the Oliver Scale or the ‘Definitive Guideline’. The Sentencing Council’s most recent Definitive Guideline revised the five-point scale to one of three offence categories from A to C, while also highlighting the possession, distribution and production that may be involved in these types of offences.

## Key principles and recommendations

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The Society recommend the following:

- Psychologists work within the professional framework of the British Psychological Society’s *Code of Ethics and Conduct* and *Generic Professional Practice Guidelines*.
- The Society noted that the viewing of illegal material may be outwith the range of usual duties performed by psychologists, and thus care should be taken when considering the reasons to view illegal material.
- The Society noted emerging evidence of the utility of categorisation, number, types and purpose of illegal images in specific cases when preparing risk assessments on offenders who have accessed illegal materials.
- Psychologists may choose to view the illegal material if thought necessary for risk assessment and psychological intervention.
- The Society did not address the process of risk assessment nor whether risk assessments could be completed without viewing the material.
- The decision to review sexually explicit material remains a matter of professional choice for the psychologist, determined by the circumstances of the case, the available evidence and the purpose of the psychological assessment.

- For psychologists, understanding of the types of images as outlined within the Definitive Guidelines by these categories may be sufficient information for the purpose of risk assessment.
- We noted that there exist guidelines within the *Sexual Offences Act Definitive Guideline* (2003). The Definitive Guidelines which cover both England and Wales in *R. v. Oliver* [2003] 2 Cr. App. R. (S) and Scotland within *HM Advocate v Graham* [2010] HCJAC 50, which assist psychologists by classifying images according to severity.
- Illegal material should remain in the possession of the police or the courts only. The Society could see no circumstances where illegal material could be safely or legally viewed outside the control of the police or courts.
- In circumstances where access to illegal material is required, psychologists should act with reference to the *Memorandum of Understanding Between Crown Prosecution Service (CPS) and the Association of Chief Police Officers (ACPO)* as the relevant guidance.
- The memorandum of understanding clarifies the position of those professionally involved in the management, operation or use of electronic communications networks.
- The memorandum of understanding provides guidance to organisations in the discovery or reporting of indecent images of children in order to balance between protecting children and effective investigation of offences.
- The memorandum of understanding reassures protection when psychologists are acting to combat the creation and distribution of illegal material.
- The memorandum of understanding indicates that ‘Society requires this protection to be appropriate and controlled in order to protect children from future or continuing abuse and to bring to justice those responsible’.
- The management of such offenders by the courts is increasingly via a combination of traditional methods of supervision and management with case-specific sanctions.

## Concluding comments

The increasing use of the internet and the availability of illegal and extreme pornographic material pose a challenge for psychologists attempting to decipher factors such as relevance of, nature and number of images for research purposes, for formulation-based assessments in any specific case, or to enhance clinical work with offenders. The above guidelines offer a framework for those who choose to access illegal materials as part of their professional duties.

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