



The Mobile Broadband Group
PO Box 34586, London SE15 5YA

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Mr David Ware
Criminal Law Policy Unit
The Home Office
50, Queen Anne's Gate
London SW1H 9AF

Dear David,

Consultation on Memorandum of Understanding Between Crown Prosecution Service (CPS) and the Association of Chief Police Officers (ACPO) concerning Section 46 Sexual Offences Act 2003.

Thank you for sending the draft Memorandum of Understanding concerning section 46 of the Sexual Offences Act 2003. The Mobile Broadband Group, whose members are O2, Orange, T-Mobile, Vodafone and 3, is pleased to have the opportunity to provide comments and these are set out below.

The context in which our comments are made is that in the near to medium term the improved capability of mobile networks and phones is expected to bring the benefits of Internet browsing and picture messaging to the mass market. This will unfortunately increase the risk of the transmission of illegal images. We are therefore extremely anxious to ensure that the Sexual Offences Act and its accompanying protocols provide adequate protection to all those that will be responsible for the removal of such material from public view and for the securing of proper evidence to allow for subsequent prosecution.

The situation on the Internet is well understood by the Home Office but we would also like to draw your attention in this regard to multi-media messaging (e.g. moving video clips, picture messages etc.), that are a particular feature of mobile networks. These images may be downloaded from the Internet or may be self-generated. They will not be borne on the Internet, as such, but will be transmitted over mobile networks, either on a peer to peer basis or in bulk. A mobile operator that becomes aware an illegal image must have a way of securing evidence of and reporting any crime without committing an offence.

Furthermore, frontline staff, whose co-operation in the detection and conviction of criminals will be absolutely vital, must be given proper protection. It may also be helpful for suitable training to be offered by the police to these members of staff.

Our comments are provided in the same order as the text of the MOU.

Introduction

"This memorandum identifies when protection will be provided to those using the internet are likely to face jeopardy for criminal offences..."

The MBG would like to see this changed to “This memorandum identifies when protection will be provided to those that face jeopardy for criminal offences in connection with the provision of public electronic communications networks and services ...”

This amendment would bring the MOU in line with the terminology of the Communications Act and make it clear that the protection encompassed illegal images transmitted via any PECN not just the Internet.

Major factors to be taken into account

In paragraph 2, it would be helpful to insert after “*detect*” “..or investigate”. This would be consistent with the equivalent statement in the introduction. It is anticipated that much of the activity that will be protected by this MOU will be the securing evidence of a crime.

We agree that it may be appropriate to give written advice covering future conduct that would help avoid suspicion or interference with police investigations. We welcome the flexibility that such an approach would give.

However, there is an important point that should be explicitly laid out in this MOU and that is around retention of data. It is possible that there will be occasions when a service provider detects an illegal or potentially illegal image, secures it appropriately and makes a report to the police but the police then do not, for whatever reason, make arrangements to retrieve the evidence in a timely fashion.

Service providers cannot retain such sensitive information indefinitely, particularly because of the extra security risk that it poses. The service provider must be allowed to destroy this data in accordance with its data retention policy (or some other reasonable period agreed with the police), without being accused of destroying evidence.

In paragraph 4, the MBG also agrees with the sentiment that appropriate training should be given and would welcome further discussion as to what such training might be involved and how it would be delivered.

The way indecent image was discovered

We would like to see inserted after “*respond to a complaint*””including responding to a complaint about an illegal image”.

This addition would make it clear that the service providers’ personnel are allowed to investigate complaints, knowing that they could find an illegal image. The interpretation of the MOU, as it is written currently, could be that the member of staff is only absolved if the illegal image is found accidentally.

The speed with which the indecent image was reported

“Authorities will need to be satisfied that the delay was reasonable”

The MBG agrees that it is sensible not to have hard and fast timelines for this sort of process. Nevertheless, there needs to be more dialogue between the police and the mobile operators to establish what sort of time scale is reasonable in these circumstances and what factors need to be taken into account.

Copying images must be kept to a minimum

The MBG would like to see inserted after “*Internet site*”... “or other electronic communications service site”

Individuals should be expected to have acted reasonably

The MBG would like to have the remainder of the heading (“*and could not have been expected to deal with things differently*”) deleted, as it introduces unnecessary scope for ambiguity and misinterpretation. The body of the paragraph adequately explains what is meant by reasonable.

Specific agreements

“Specific written authorities to undertake particular work in support of the legislation by officers acting in behalf of a chief police officer.”

This measure sounds very helpful and is likely to promote a flexible and productive relationship between the service providers and the police. It would be useful, nevertheless to have a greater understanding as to how this works in practice

In conclusion, the MBG very much welcomes this MOU. The mobile operators are committed to giving customers an environment in which to use mobile communications services with confidence and without being exposed to illegal images. We are keen to work closely with Law Enforcement Agencies and to assist with their investigations. As part of this, it is also vitally important that the police deal with this threat as a matter of the highest priority and are adequately resourced.

A number of times in our response, we allude to the need for further discussions with the police. We would welcome the opportunity for such discussions and we will follow up shortly to arrange a meeting with the relevant people. In the meantime, if you have any questions about our response, do not hesitate to contact me.

Yours sincerely,

Hamish MacLeod
Mobile Broadband Group