



Questionnaire

PROJECT 107C: SEXUAL OFFENCES: PORNOGRAPHY AND CHILDREN

Researcher – Dellene Clark
 SA Law Reform Commission , Private Bag X668, Pretoria, 0001
 E-mail: DClark@justice.gov.za, Tel: +27 12 622 6307, Fax: +27 12 622 6361

NOTE:

- It is not necessary to complete all of the questions – some are technical in nature
- In this questionnaire reference to a child is someone under the age of 18
- A separate questionnaire is available for children

Name and Surname

--

Male	Female
------	--------

Age category:

19-24	25-34	35-44	45-54	55-64	65-74	75>

Area of home or work

Urban	Rural
-------	-------

Highest qualification

Primary school Grade?	Senior School Grade?	Tertiary	Graduate

Occupation

Educator	Criminal Justice	Industry specialist	Parent

1. What is your understanding of the terms pornography and child pornography?

2. In your view is exposure of children to pornography and or child pornography (child abuse material) a problem in South Africa? If so, in what respect?

3. In your experience is the material children are exposed to child pornography (child abuse material); age inappropriate content, pornography which is legal for adults or is it explicit self- images sent between peers?

- 4. Are children inadvertently exposed to pornography or are they exposed after seeking it for example by way of a specific internet search?**

- 5. In your view what are the effects of exposure of children to pornography?**

- 6. Does the law adequately address concerns around children's exposure to pornography and child pornography (child abuse material)?**

- 7. Should the law reflect through its definitions that child pornography (child abuse material) or explicit images of children are not victimless crimes?**

- 8. Should it be a consideration that the purpose of an image or description of a child was artistic or aesthetic where the image or description could be used as child pornography (child abuse material)?**

- 9. Should photos or images in family photo albums which are capable of being used as child pornography be treated differently to those available on or through an electronic device?**

- 10. Suggest how pornography and child pornography (child abuse material) could be defined to address any of your concerns.**

- 11. When do or should explicit self-images or sexting amount to child pornography (child abuse material)? How should taking and distributing of explicit self-images by children be dealt with?**

- 12. What is the appropriate legal response to children at risk of exposure to pornography or child pornography (child abuse material)?**

13. What responsibility and or accountability do or should parents/caregivers have towards their children to protect them from exposure to child pornography and other adult material?

Sexual Offences Act

14. Is the definition of “child pornography” and the definition of “pornography” in the Sexual Offences Act adequate or should these definitions be amended? If so how?

15. Does section 18 in the Criminal Law (Sexual Offences and related matters) amendment Act 32 of 2007 sufficiently define the crime of sexual grooming of children?

16. Could part (iii) of the definition of “child pornography” in the Sexual Offences Act be interpreted to mean that “sexting” of self-produced nude or semi-nude images will also amount to the distribution, but not the creation or production, of child pornography?

Films and Publications Act

17. Please comment on whether sections 24A(2)(c) and 24(3) of the Films and Publications Act (FPA) should be amended by inserting the words:

“or would.....have been so classified had it been submitted for classification”.

18. If the purpose of prohibiting the distribution or exhibition of films within the categories of “Refused Classification”, “XX” or “X18”, *whether classified or not*, is the protection of children, why should broadcasters be allowed to screen such films, when it is known that children watch more films on TV than in cinemas?

19. To what extent is the FPA applicable to regulatory authorities of broadcasters and publishers?

20. Are the offences relating to child pornography (child abuse material) correctly placed in the FPA?

21. International examples exist of laws which provide that downloading any image from a digital device is “creation” thereof. Should South African law be amended to reflect this?

- 22. Provide your view on whether foreign based services used by children such as whatsapp fall under the obligations found in section 24C of the FPA and if not whether they should?**

- 23. Is the provision on extra-territorial jurisdiction in the FPA sufficient to cater for the international reach of the internet and for anomalies such as different ages of consent in different countries?**

- 24. If the purpose of the FPA is to classify and not to create crimes, should the crimes created in the Sexual Offences Act be given preference?**

25. Comment on whether in your view a child used to create child pornography (child abuse material) is adequately protected by Criminal Justice role-players.

26. In your view is the management of child pornography (child abuse material) adequately governed in the Criminal Justice system and if not is legislative change needed to assist these role-players to protect children.

27. Explain whether in your view the law allows for appropriate searches and seizures in respect of pornographic material.

- 28. Section 27 of the FPA allows a service provider to suspend access. However this is not helpful to the police as they need to trace the person and cannot do this if access is suspended. There is a fine line between “finding” child pornography (child abuse material) and “viewing” it. How should this problem be remedied?**

- 29. Is it or should it be an offence to expose children to any material of a sexual nature even if it does not fall within the definition of “pornography” in the Sexual Offences Act but is “contemplated in the Films and Publications Act, 1996”?**

- 30. The offences in the FPA do not all include prescribed sentences. Explain if and why it would be necessary to include penalty clauses for these offences and what the appropriate sentence should be.**

31. Is there a lack of synergy between the FPB and ICASA and if so does this warrant investigation?

32. Would a uniform classification system for content exhibited or distributed through the mass media in South Africa be a move in the right direction?

Children's Act

33. In your view is it sufficient for the Children's Act to make reference to "pornography" without defining it?

34. Does the existence of different legal definitions complicate law enforcements response to crimes involving children and pornography?

35. Is there a need to enhance the criminal law response to the creation, possession and distribution of child pornography (child abuse material)?

36. Would the consolidating of all offences relating to child pornography (child abuse material) in one piece of legislation enhance the criminal law response to these crimes?

37. Is law reform necessary to provide children with protection from exposure to pornography or is the existing legal framework adequate?

38. Would a mere change in policy or improved implementation of existing legislation be sufficient to address the problem of children being exposed to pornography through the mass media, especially through the internet, mass media and mobile phones?

39. Is it necessary to investigate existing structures and policies governing classification, enforcing and monitoring of the productions, distribution and exhibition of pornography?

Broadcasters, Service providers and related roleplayers

- 40. Are broadcasters allowed / should they be allowed to screen films which cinemas may not exhibit or distributors sell or hire out?**

- 41. Do broadcasters and publishers who are exempt from the regulatory authority of the FPA meet the objectives of the FPA as required?**

- 42. Should legislation provide that the abovementioned broadcasters and publishers are obliged to provide consumer advice to enable adults to make informed viewing, reading and gaming choices, both for themselves and for children in their care and to protect children from exposure to disturbing and harmful materials and from premature exposure to adult experiences?**

43. Comment on whether service providers provide adequate protection to children using child-oriented services?

44. What is the position in respect of content service providers who are internet service providers?

45. Are the blocking possibilities for parental control adequate?

46. Are the instructions for parental control available in multiple languages?

47. Do discussants think that they are adequately promoted?

48. Would filtering pornography at tier one level be seen as an unjustifiable limitation of adult consumers rights to privacy and freedom of expression or would it pass constitutional muster?

49. If pornography is made available to adults in an adults only licensed shop as opposed to online, would the limitation actually constitute more of an inconvenience than a true limitation of the right?

50. If advertisers and adult consumers of pornography were restricted to offline legal pornography would this amount to censorship?

Project 107: Sexual Offences (Pornography and Children)

Workshop Summary

1. As part of the overarching investigation into the review of all sexual offences this investigation seeks to review the legislative framework that currently applies to children in respect of pornography and child abuse material (child pornography) within the larger framework of all statutory and common law sexual offences. The secondary aim is to consider the need for law reform in relation to the legislative framework governing children and pornography.

2. The extraordinary opportunities offered by the mass media to access a varied and vast amount of information, educational material and entertainment and to actively engage in remote communication using electronic tools do not come without risks. One of the risks that children face when engaging with the mass media and using electronic tools in South Africa is that they may intentionally seek or unintentionally be exposed to sexually-explicit material which may be illegal or may only be legal for adults.

3. For the purpose of this issue paper four areas of concern have been identified, namely:
 - Access to or exposure of a child to pornography and child abuse material;
 - Creation and distribution of child abuse material
 - Explicit self-images created and distributed by a child; and
 - Grooming of a child and other sexual contact crimes associated with or which are facilitated by pornography.

4. This issue paper aims to identify the manner in which the law currently regulates and protects children from being exposed to pornography or from being used or abused to create pornography and whether there is a need for law reform. Its purpose is to initiate and stimulate debate, to explore proposals for law reform and to serve as a basis for further in-depth deliberation.

5. The Issue Paper has four chapters. Chapter 2 provides an overview of the concerns relating to child abuse material; grooming of children to generate child abuse material; and the exposure of children to pornography and child abuse material. The context is explored from a

local, African and global viewpoint. Chapter 3 looks at the international imperative to protect children and the legislative response in South Africa towards protecting children from pornography and child abuse material. The legislative exposition differentiates between the criminal law response and the regulatory response. The aim of the exposition being to identify possible weaknesses in the law which may require reform in order to better protect children from exposure to illegal or age inappropriate pornographic content. Chapter 4 provides a brief look at pending legal developments relevant to this investigation and it touches on some examples of foreign law and practice, which will be enhanced in the Discussion Paper to follow. This chapter includes two focal questions, namely whether there is a need to enhance the criminal law and response to the creation, possession and distribution of child abuse material; and whether there is a need to provide greater protection for children from exposure to pornography and child abuse material.

6. The Issue Paper contains questions aimed at discovering the issues at hand and the extent of the need for law reform. The Commission specifically requests comment on the Issue Paper and particularly the questions which are posed in it.

7. Following the issue paper, the Commission will publish a discussion paper setting out preliminary recommendations and draft legislation, if necessary. The discussion paper will take the public response to the issue paper into account and will test public opinion regarding solutions identified by the Commission. On the strength of these responses a report will be prepared containing the Commission's final recommendations. The report (with draft legislation, if necessary) will be submitted to the Minister of Justice and Correctional Services for his consideration.

8. Some of the questions found in the text of the Issue Paper relevant to this discussion are attached.