

UNCLASSIFIED



Department of Communications and the Arts
38 Sydney Avenue, Forrest ACT 2603
GPO Box 2154 Canberra ACT 2601

AFP response to discussion paper: Civil penalties regime for non-consensual sharing of intimate images

General comments

The AFP shares community concerns in respect to all forms of technology-facilitated abuse, including revenge porn, where images may be taken with or without consent and then shared, or traded, without consent.

The AFP has consistently maintained the position that the responsibility for investigating revenge porn rests principally with State and Territory police. This reflects the *Australia New Zealand Policing Advisory Agency Protocols for Law Enforcement Agencies on Cybercrime Investigation*.

The AFP undertakes investigations of serious international and online child exploitation.

AFP investigative mandate includes the targeting of Australians involved in the production and supply of child exploitation material and the targeting of Australians travelling for the purposes of sexually exploiting children.

The demand on the AFP in this area is growing exponentially.

The AFP Assessment Centre has received 5000 reports of child exploitation (year to date as at 26 June). Each one of these reports can contain hundreds and thousands of images and videos of children being sexually abused and tortured.

In 2016, the AFP received more than 8,000 reports of child exploitation. This year alone the AFP's Child Exploitation Assessment Centre has experienced a tsunami of reports of child exploitation.

The volume we are experiencing relating to all types of child exploitation continues to grow, and this further places pressure on law enforcement's response.

If the AFP was required to lead enforcement of revenge porn it would detract from the AFP's mandate to investigate child exploitation matters and focus its resources on a potentially high volume crime of a lower threshold.

The AFP in principal supports the concept of civil remedies by the Office of the Children's eSafety Commissioner as an option to address these issues; however, AFP will continue to consult with the eSafety Commissioner on matters involving minors that may require police investigation.

UNCLASSIFIED

The AFP provides the following comments in relation to this discussion paper where the establishment of a civil penalties regime could interact with AFP Victim Based Crime portfolio.

Civil penalty regime

4. Should the Commissioner be able to share information with domestic and international law enforcement agencies?

AFP Victim Based Crime is specifically responsible for targeting and combating child exploitation, both online and perpetrated by Australians overseas.

The AFP maintains liaison posts in more than 29 countries to facilitate international police cooperation. The AFP currently uses these police-to-police channels for collaboration and information sharing on child exploitation matters.

The vast majority of the reports the AFP receives are regarding the unlawful online activities of individuals involved in the production and supply of child exploitation material or involved in online procuring/grooming of persons under 16 years of age both in Australia and by Australians overseas. These reports come from a variety of sources.

When websites are hosted in foreign jurisdiction, where possible, the AFP utilises police-to-police networks to seek the removal of malicious or unlawful content and the prosecution of offenders.

However, it should be noted that often websites are hosted in jurisdictions outside the reach of the AFP's police-to-police networks or Australia's Mutual Legal Assistance framework.

The AFP believes that international referrals relating to child exploitation should remain with the AFP for consistency and ongoing cooperation with foreign law enforcement agencies.

Should the AFP be involved in referring criminal matters internationally, the AFP would require an agreed referral criteria, including a package of information to be provided to the relevant foreign law enforcement agency. Information provided is assessed against the AFP's policy and guideline in relation to death penalty matters.

The AFP does not support information relating to civil complaints being provided to international law enforcement agencies. These established networks are primarily for international cooperation relating to serious criminal matters.

In Australia, domestic matters could be directed to law enforcement in the local jurisdictions without impact to AFP operations.

5. What triaging processes should be implemented by the Commissioner for the handling of complaints? For example, if an intimate image is of a minor (a person under the age of 18), should the Commissioner be required to notify police and/or the parents/ guardians of the minor? Should there be any circumstances in which the minor should have the option to request that police or family are not notified?

The AFP believes that a number of factors need to be taken into consideration regarding a 'triage' process when matters are reported to the Commissioner involving minors, including whether there are indications of child exploitation or grooming.

To identify these indicators, law enforcement advice and expertise may be required.

UNCLASSIFIED

The AFP will continue to consult with the Commissioner to determine an agreed threshold across agencies of what is considered a police matter for any referral to law enforcement for investigation.

6. In cases where an intimate image of a minor is shared without consent by another minor, should a different process be followed to cases where an image of an adult is shared by another adult?

As per the previous position, the AFP investigative mandate includes the targeting of Australians involved in the production and supply of child exploitation material and the targeting of Australians travelling for the purposes of sexually exploiting children.

The AFP believes there needs to be a distinction with matters involving minors, as it is critical to determine whether there are any other factors to indicate child exploitation.

The AFP will continue to consult with the Commissioner to determine an agreed threshold for all matters involving minors, and whether law enforcement education and prevention strategies have a role as an alternative to the justice system.