

CATEGORISATION OF IMAGES – REFERENCE MATERIAL

Introduction

This categorisation flow chart aims to supplement the Grading Guidelines and to offer a clear decision tree for the categorisation of indecent images of children. The document was proposed by the Grading Panel as a useful aide memoir to assist in minimising, as far as possible, the variation in categories assigned by different viewers. It particularly emphasises that images should only be entered into categories A-C if it is beyond reasonable doubt that the photograph both, (a) contains a child AND (b) is indecent. Additionally, it stresses that images that do not meet this test but are still of concern will not be lost to future investigations as they can be flagged within the "Indicative, Borderline, Other notable" category (NHSDB category 6).

When categorising images the advice in the ACPO Guidance on presentation of indecent images of children to court to act proportionately should always be born in mind. This will assist in the decision to stop categorisation and will help to avoid carrying out unnecessary work but rather, focus on the tasks that can make a difference to child protection.

Grading Guidelines - Categorisation of Indecent Photographs of Children

The Grading Guidelines provide further details about the categorisation that should be used for indecent images of children, including the definitions of the categories with detailed explanations and references to justify the approach that should be taken. The flowchart overleaf should be applied in conjunction with these guidelines. The Guidelines can be found in the Documents section of the eForensics Community on the Police On-Line Knowledge Area (POLKA).

Principles to Apply when Categorising Indecent Images of Children

- Use your own experience and judgment to determine if a photograph shows a child and is indecent
- Use the threshold of beyond reasonable doubt in this determination
- Evaluate each photograph on its merits
- Do not take into account any suspicions you have on the motivation of the suspect
- In circumstances where there are uncertainties as to the correct category act in favour of the suspect

Definition of Extreme Pornography Images

In order for an image to fit the definition of extreme pornography, it must be pornographic, grossly offensive, disgusting, or otherwise of an obscene character and portray in an explicit and realistic way any of the following:

- an act which threatens a person's life
- an act which results in or is likely to result in serious injury to a person's anus, breast or genitals
- an act which involves sexual interference with a human corpse
- a person performing an act of intercourse or oral sex with an animal (whether dead or alive)

Definition of Prohibited Images

In order for an image to be a "prohibited image", there are 3 elements that must be satisfied. An image must meet all 3 of the elements which are:

1. That the image is pornographic
2. That the image is grossly offensive, disgusting, or otherwise of an obscene character
3. That the image focuses solely or principally on a child's genitals or anal region, or portrays any of the following acts:
 - the performance by a person of an act of intercourse or oral sex with or in the presence of a child
 - an act of masturbation by, of, involving or in the presence of a child
 - an act which involves penetration of the vagina or anus of a child with a part of a person's body or with anything else;
 - an act of penetration, in the presence of a child, of the vagina or anus of a person with a part of a person's body or with anything else;
 - the performance by a child of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary);
 - the performance by a person of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary) in the presence of a child.

Definitions of National Hash Set Database Categories

1	SC Category A - Images involving penetrative sexual activity, sexual activity with an animal or sadism
2	SC Category B - Images involving non-penetrative sexual activity
3	SC Category C - Other indecent images not falling within categories A or B
4	Prohibited images of children
5	Extreme Pornography
6	Indicative / Borderline / Other notable Pictures that (a) do not meet the beyond reasonable doubt test to be included in Category A-C (i.e. some doubt as to age) (b) not illegal but raise concerns (i.e. lots of legal pictures of children) (c) related to illegal pictures (i.e. banners from sites known for illegal child content and images in a series that are not indecent in themselves) (d) known to be of child abuse but category unknown (e.g. pictures imported from international collaboration with jurisdictions who do not classify images in categories A-C).
8	Ignorable / Discounted (including adult pornography)
9	Case or force specific images (Not for uploading to National Hash Set Database)

ACPO Guidance on Presentation of Indecent Images of Children to Court

In cases involving large numbers of images, the categorisation activity can take a disproportionate amount of time. The key message of this Guidance is that the case should be dealt with justly and proportionately. Following the principles of the Criminal Procedure Rules the investment of time in reviewing and categorising images for sentencing purposes can reasonably take into account the gravity of the offence alleged (and the likely sentence) as well as the needs of other cases. One crucial issue is that sentencing is dependent on the size of the collection of images at each level, but the number of images that makes up a large collection is not defined. However, in general, above a certain threshold, the presentation of additional images will have limited effect on the final sentence, especially when other aggravating and mitigating factors are taken into account.

The Guidance suggests the police should aim to provide a schedule containing an adequate quantity of images so that the judge's powers of sentencing are sufficient. To assist in this determination comments relevant to the number of images that make up a large collection in previous Court of Appeal judgments may prove informative. With respect to the more serious images, for the combined count at level 4 and 5, judgments in the Court of Appeal indicated that 92 (R v Wakeling), 85 (R v Ashton) and "no less than 50" (R v Reast) constitutes a large quantity in the circumstances of those cases. With respect to the less serious images the Court of Appeal found that in R v Worrell 251 images constituted a large quantity of level 2 images. These numbers can be used as guidance to assist in decisions on the number of images that is sufficient to present to court.

CATEGORISATION OF IMAGES – FLOWCHART

Is it clearly Legal?

An image could obviously be legal e.g. system graphics, logos, landscapes, album art.

An image may not be illegally held in itself, but if it is indicative of an interest in children, then it should be categorised as NHSDB C6 (indicative / borderline / other notable) e.g. A logo from a website known for child abuse material

Is it a photograph?

'Pseudo-photographs' i.e. images that "appear to be a photograph", should be categorised in the same manner as photographs.

Is it a prohibited image?

Prohibited images are non-photographic e.g. cartoons, graphics, artwork, and give the predominant impression of representing a child and include one or more of the specified sexual acts.

Does it contain a child?

A child is a person under 18. Use your own experience and judgment to determine if a photograph shows a child.

To be included as an illegal photograph, you should be sure "beyond reasonable doubt" that the person shown is under 18

Is it extreme pornography?

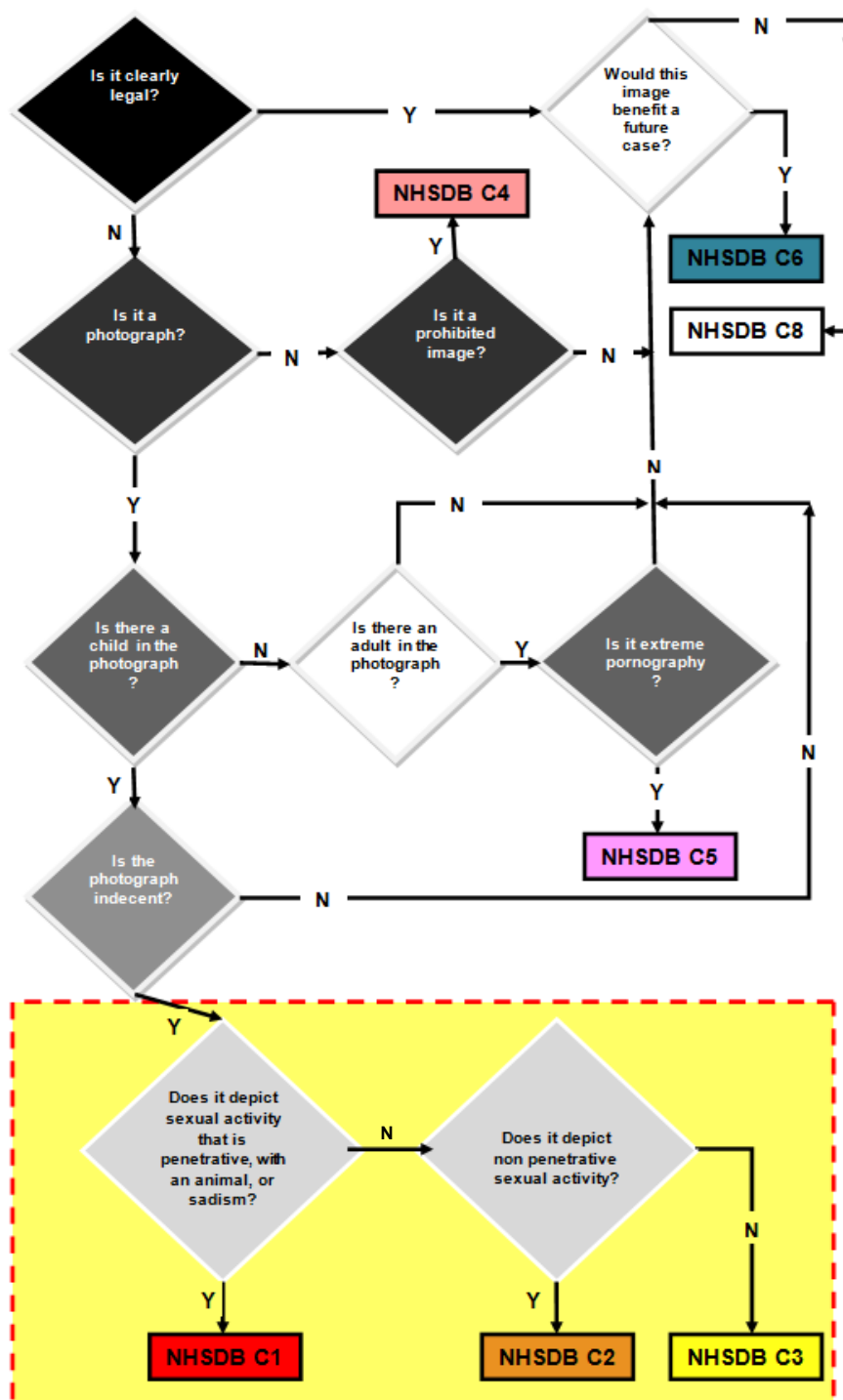
"Extreme pornography" must be pornographic, grossly offensive, disgusting, or otherwise of an obscene character and portray one or more of the specified acts.

Is the photograph indecent?

You should use your own experience and judgment to decide if the photograph is indecent. A simple test is to ask yourself whether your family, friends and acquaintances would consider it acceptable to possess a picture of a child of that age in that setting.

Does it depict sadism?

Sadism is defined as the tendency to derive pleasure, especially sexual gratification, from inflicting pain, suffering, or humiliation on others. You should use your judgment to decide whether the threshold has been reached to constitute sadism.



NHSDB C6

This level will include images where the viewer cannot be sure, beyond reasonable doubt, that the image involves a child, or is indecent.

This may be due to uncertainty surrounding the age of the subject, poor quality of the image or limited field of view. If the viewer is not sure BEYOND REASONABLE DOUBT that the images show children and are indecent, then these should NOT be categorised in NHSDB C1-3.

If you are concerned that the image MAY contain a child and be of interest to an investigation, these can still be highlighted as of interest by categorising them as NHSDB C6.

As a matter of policy agreed by the Grading Panel, naturist photographs that include children should also be categorised as NHSDB C6. If these have a focus on the genital region, they should be treated as an indecent photograph and categorised at NHSDB C1-3 as appropriate.

NHSDB C3

It is possible that a photograph of a clothed child is indecent but categorisers must be sure that most people would consider it is. Many people would consider a clothed child in an erotic pose to be indecent and usually, this would require a pose that is positioned to deliberately expose the genital area, even though underwear is present. Another example of this is where the child is posed simulating a sexual act or with a sex toy.

NHSDB C1

The sexual penetration of a child with a foreign object should be categorised as NHSDB C1

NHSDB C1-8 are the categories used within the National Hash Set Database

Does it depict penetrative sexual activity?

All penetrative sexual activity (vagina, anus or mouth) involving a child or children, or both children and adults should be categorised as NHSDB C1. The exceptions to this are penetration of the mouth by a sex toy and the entry of a finger into the mouth of a child. The test of whether there is penetration to the slightest degree should be applied.

NHSDB C1 should include images where the predominant impression is that penetrative sexual activity is occurring, even if the actual penetration itself may not be visible. e.g. an image depicting oral sex may actually have the head obscuring the genital area and although the penetration itself is not visible, then it is clearly implied.

SEEK ADVICE on the appropriate categorisation level from peers, management or the Grading Panel

Revised 27/03/14