

## SCHEDULES

### SCHEDULE 8

Section 33

#### DISCLOSING PRIVATE SEXUAL PHOTOGRAPHS OR FILMS: PROVIDERS OF INFORMATION SOCIETY SERVICES

##### *England and Wales service providers: extension of liability*

- 1 (1) This paragraph applies where a service provider is established in England and Wales (an “E&W service provider”).
- (2) Section 33 applies to an E&W service provider who—
  - (a) discloses a photograph or film in an EEA state other than the United Kingdom, and
  - (b) does so in the course of providing information society services,as well as to a person who discloses a photograph or film in England and Wales.
- (3) In the case of an offence under section 33, as it applies to an E&W service provider by virtue of sub-paragraph (2)—
  - (a) proceedings for the offence may be taken at any place in England and Wales, and
  - (b) the offence may for all incidental purposes be treated as having been committed at any such place.
- (4) Nothing in this paragraph affects the operation of paragraphs 3 to 5.

##### *Non-UK service providers: restriction on institution of proceedings*

- 2 (1) This paragraph applies where a service provider is established in an EEA state other than the United Kingdom (a “non-UK service provider”).
- (2) Proceedings for an offence under section 33 may not be instituted against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is satisfied.
- (3) The derogation condition is satisfied where the institution of proceedings—
  - (a) is necessary for the purposes of the public interest objective,
  - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and
  - (c) is proportionate to that objective.
- (4) “The public interest objective” means the pursuit of public policy.

*Exceptions for mere conduits*

- 3 (1) A service provider is not capable of being guilty of an offence under section 33 in respect of anything done in the course of providing so much of an information society service as consists in—
- (a) the provision of access to a communication network, or
  - (b) the transmission in a communication network of information provided by a recipient of the service,
- if the condition in sub-paragraph (2) is satisfied.
- (2) The condition is that the service provider does not—
- (a) initiate the transmission,
  - (b) select the recipient of the transmission, or
  - (c) select or modify the information contained in the transmission.
- (3) For the purposes of sub-paragraph (1)—
- (a) the provision of access to a communication network, and
  - (b) the transmission of information in a communication network,
- includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

*Exception for caching*

- 4 (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.
- (2) The service provider is not capable of being guilty of an offence under section 33 in respect of the automatic, intermediate and temporary storage of information so provided, if—
- (a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and
  - (b) the condition in sub-paragraph (3) is satisfied.
- (3) The condition is that the service provider—
- (a) does not modify the information,
  - (b) complies with any conditions attached to having access to the information, and
  - (c) where sub-paragraph (4) applies, expeditiously removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that—
- (a) the information at the initial source of the transmission has been removed from the network,
  - (b) access to it has been disabled, or
  - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

### *Exception for hosting*

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- (1) A service provider is not capable of being guilty of an offence under section 33 in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service if sub-paragraph (2) or (3) is satisfied.
  - (2) This sub-paragraph is satisfied if the service provider had no actual knowledge when the information was provided—
    - (a) that it consisted of or included a private sexual photograph or film,
    - (b) that it was provided without the consent of an individual who appears in the photograph or film, or
    - (c) that the photograph or film was provided with the intention of causing distress to that individual.
  - (3) This sub-paragraph is satisfied if, on obtaining such knowledge, the service provider expeditiously removed the information or disabled access to it.
  - (4) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

### *Interpretation*

- 6
- (1) This paragraph applies for the purposes of this Schedule.
  - (2) “Disclose” and “photograph or film” have the meanings given in section 34.
  - (3) “Information society services”—
    - (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive [98/34/EC](#) of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and
    - (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”,and “the E-Commerce Directive” means Directive [2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).
  - (4) “Recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible.
  - (5) “Service provider” means a person providing an information society service.
  - (6) For the purpose of interpreting references in this Schedule to a service provider who is established in England and Wales or an EEA state—
    - (a) a service provider is established in England and Wales, or in a particular EEA state, if the service provider—
      - (i) effectively pursues an economic activity using a fixed establishment in England and Wales, or that EEA state, for an indefinite period, and

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*Status: This is the original version (as it was originally enacted).*

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- (ii) is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union;
- (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;
- (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider's activities relating to that service.