

Draft Guidance on Online Pornography (Commercial Basis) Regulations 2017 and Draft Guidance on Ancillary Service Providers – Naturist Action Group’s Response.

Do you agree with the BBFC’s Approach as set out in Chapter 2?

1. In general, Naturist Action Group agrees with the approach the BBFC is taking in regards to Online Pornography (Commercial Basis) Regulations 2017 and Ancillary Service Providers, but we also believe the BBFC has a duty of care to the consumer, ensuring they are not misled by inappropriate titles and/or description of content under Regulation 5 of The Consumer Protection from Unfair Trading Regulations 2008 and paragraph 32 of The Digital Economy Act 2017.
2. The Naturist Action Group (<http://naturistactiongroup.org>) is an independent collective of naturists seeking the inclusion of naturism within British society. It is a not-for-profit organisation, limited by guarantee, and has no membership, but can number approximately 500 registered users for our website, almost 1,500 supporters on Facebook and roughly 4,000 followers on Twitter.
3. Section 15 (1) (d) of the Digital Economy Act 2017 defines the online content covered by the regulations as: “a video work in respect of which the video work authority has issued an 18 certificate, and it is reasonable to assume from its nature was produced solely or principally for the purposes of sexual arousal.” Sections 15 (1) (f) (i) and 15 (1) (g) (i) similarly describe the content covered.
4. The International Naturist Federation (www.inffni.org) defines naturism thus: “Naturism is a way of life in harmony with nature characterised by the practice of communal nudity with the intention of encouraging self-respect, respect for others and for the environment.”
5. From British Naturism’s website (<https://www.bn.org.uk/campaigning/index/>), it defines naturism as: “A philosophical belief in a natural, naked lifestyle’ characterised by respect; for oneself, for others and for the natural environment.” Our own definition is not too dissimilar from that used by British Naturism. All three organisations believe that naturism is the expression of non-sexual social nudity that has benefits, both psychological and physical, for human health.
6. The Oxford English Dictionary (<https://en.oxforddictionaries.com/definition>) defines the word **naturist** as: “A person who goes naked in designated areas; a nudist. (e.g.): ‘he is a dedicated naturist’” and for **nudist** it states: “A person who engages in the practice of going naked wherever possible.” Similarly, Chambers Dictionary defines Nudism as: “1. The practice of not wearing clothes, as a matter of principle; 2. *US Naturism*. Nudist, noun, someone who wears no clothes, as a matter of principle.” None of these definitions suggest that sexual activity is part of the lifestyle.
7. An online search using the term “naturists in porn” easily finds websites offering pornographic content with ‘naturist’ or ‘nudist’ in the title, thereby implying a link between the lifestyle and sex, and purely for the purpose of arousal (e.g.: <https://xhamster.com/videos/naturist-club-filed-with-a-friend-pt-1-8828101>; https://www.xvideos.com/video11452787/nudist_bar_-_30s_france). All too often with the online content the pornographer provides they give the impression that naturists, by their naked state are almost permanently aroused and desire sex. Not so. Naturists acknowledge the existence of sex, of course; naturism is a family-orientated lifestyle after all, but like so many things in life, it has its time and its place. The use of the ‘naturist’ tag by the online pornography industry therefore has detrimental consequences to the consumers’ understanding of what naturism (nudism) is and as a result they are being misled by the use of these terms in the title of the work and/or description used to entice the consumer into a transactional purchase.
8. While Naturist Action Group recognises that the primary purpose of the BBFC in this process is to ensure that online pornographic works with either an ‘18’ or ‘R18’ certificate and websites hosting these pornographic works are age restricted, we believe the BBFC has an unspecified duty to protect the consumer by ensuring they are not misled by incorrect terms in titles and/or descriptions.

9. Under **The Consumer Protection from Unfair Trading Regulations 2008 Part 2, Misleading Actions, Regulation 5** (<http://www.legislation.gov.uk/ukxi/2008/1277/regulation/5/made>): ‘a commercial practice is a misleading action if it satisfies the conditions in either paragraph (2) or paragraph (3).’ Paragraph (2) (a) states a commercial practice would satisfy the conditions of the paragraph “if it contains false information and is therefore untruthful in relations to any of the matters in paragraph (4).”
10. Paragraph 4 (f) of Regulation 5 referenced above states that: “any statement or symbol relating to direct or indirect sponsorship or approval of the trader or the product.” As stated previously, it is our contention that statements made by the pornography industry describing naturism are false and misleading. No naturist organisation would sponsor or approve of a pornographic trader or their product, either directly or indirectly that links the naturist lifestyle with sexual activity via online video content, either by word or deed.
11. Paragraph (3) (a) of the 2008 regulations states a commercial practice would contravene it if “it concerns any marketing of a product ... which creates confusion with any products ... or other distinguishing marks of a competitor.” No reputable naturist organisation would consider themselves a competitor to that part of the sex industry these regulations are concerned with, however, we would contest that the terms naturism, naturist, nudism and nudist defines our ‘product’ as described above and would not endorse or condone how pornographers would like it to be portrayed. It is our contention that statements made in the title and/or description of the work amount to marketing material designed to attract the consumer to either view or purchase the video work allegedly containing naturist content.
12. We further submit that the BBFC should consider Paragraph 32 of **The Digital Economy Act 2017** which amends section 107 of The Copyright, Designs and Patents Act 1988 relating to the infringement of copyright. It substitutes the text for paragraphs 2A and 2B, making them more relevant to the new economy. The text for paragraph 2A is changed to: “A person (‘P’) who infringes copyright in a work by communicating the work to the public commits an offence if P (a) knows or has reason to believe that P is infringing copyright in the work and (i) intends to make a gain for P or another person.”
13. Video content (https://www.xvideos.com/video9552899/nudist_colony_tour_-_naked_and_free) titled *Nudist Colony Tour* hosted by xvideos.com is a promotional work owned by Hideaway Nudist Resort, Oklahoma USA, and listed by the American Association for Nude Recreation (AANR) as a member for the Southwest region (<https://www.aanr-sw.org/index.html> — accessed 14 Apr 2018). In 2008, this association suspended a nudist resort for contravening its family-friendly policies (<http://ttt-suweb.newscyclecloud.com/news/2009/aug/22/pa-g-string-contest-brings-trouble-to-paradise-ar-83093/>). The resort later gave up its membership allowing it to pursue an adult-only business model. In the light of this, it is highly unlikely that permission to upload the video would have been given by Hideaway Nudist Resort, even if it had been sought.
14. Although the above example is from the USA, it demonstrates the blatant disregard for copyright law for any country by the online pornographic industry, the United Kingdom included.
15. Naturist Action Group recognises that these arguments may be outwith the scope of this consultation but feel that it is important that we bring to your attention through this submission the broader aspects of consumer protectionism implied in the Digital Economy Act 2017, and the Consumer Protection from Unfair Trading Regulations 2008. We feel that the BBFC is in an ideal place to inspect content as the designated authority under the Video Recordings Act 2010, to not only assign a certificate to the video and confirm the age-verification process as fit for purpose, but to also verify that the title and/or description are not potentially misleading consumers with inaccuracies and/or false vicarious endorsements.

Do you agree with the BBFC’s Age-verification Standards set out in Chapter 3?

No Comment

Do you have any comments regarding Chapter 4?

No Comment