



Liberal Democrats DCMS team response to Ofcom's Consultation on Video Sharing Platforms Guidance.

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Introduction

Much of substance of Ofcom's consultation on the Video-sharing platform guidance, together with the research on which it is based is very welcome.

In this context Section 3(1) of the Communications Act 2003, imposed on Ofcom the statutory duty to further the interests of citizens in relation to communications is of great importance.

To date that has been crucial in ensuring that regulatory decisions are not dictated by market criteria but governed by proper considerations of the broader public interest. That overarching statutory duty becomes even more important as Ofcom takes on the role of online regulator. It will be essential in reinforcing its ability to protect citizens, including children and the vulnerable, from a range of social harms as well as the threats to our democracy via fake news and disinformation.

The effectiveness of the protection provided against internet harm will depend on Ofcom's ability to shoulder those responsibilities and the way it works with our other regulators—the ICO, the CMA and the Financial Conduct Authority—in the newly created Digital Regulation Co-operation Forum.

Your response

Question 1: Do you have any comments on Section 3 of the draft guidance on harmful material and related definitions?

We broadly agree with the guidance on harmful material as it applies to individuals etc but

(1) Please see our comments on BBFC classification below.

(2) In the consultation document at para 2.19 it states: “The VSP Regime has a more limited application than the proposals in the Government’s Online Harms White Paper, both in terms of the services that will fall under regulation by Ofcom and the range of harms that will be covered. However, both regimes have a shared focus on systems and processes over content assessment by the regulator.”

We would suggest, therefore that the Draft Guidance on the range of harms considered should remain under review until after the agreement on the list of harms to be included in the forthcoming Online Safety Bill.

For instance in respect of both the Online Safety Bill in its current draft form and the Draft Guidance there is the question of the omission of societal harms caused by eg misinformation and disinformation (anti vax videos for example) that need to be tackled. We see no proposals in the Draft Guidance in this respect.

Question 2: Do you have any comments on the draft guidance about measures which relate to terms and conditions, including how they can be implemented?

Question 3: Regarding terms and conditions which prohibit relevant harmful material, do you have any comments on Ofcom’s view that effective protection of users is unlikely to be achieved without having this measure in place and it being implemented effectively?

Question 4: Do you have any comments on Ofcom’s view that, where providers have terms and conditions requiring uploaders to notify them if a video contains restricted material, additional steps will need be taken in response to this notification to achieve effective protection of under-18s, such as applying a rating or restricting access?

The guidance re Terms & Conditions’ is generally sensible. We agree in particular with the statement in 4.37 re enforcement by VSP’s. Our main concerns relate to enforcement by OFCOM to ensure that VSPs comply with their obligation to put these T&C’s in place. See below.

We believe that para 4.20 of the Draft Guidance re age restriction could be put more strongly and mere notification is not sufficient.

See also answer to question 7 below.

Question 5: Do you have any comments on the draft guidance about reporting or flagging mechanisms, including on Ofcom's view that reports and flagging mechanisms are central to protecting users?

We strongly agree with this section of the Draft Guidance, in particular paragraph 4.58 but believe 4.62 should be strengthened in its requirement.

Question 6: Do you have any comments on the draft guidance about systems for viewers to rate harmful material, or on other tagging or rating mechanisms?

We are reassured that Ofcom is engaging with the BBFC to ensure their expertise on age ratings is taken into account in the regulation of these platforms. These tried and tested age ratings should be a requirement on VSPs.

Question 7: Do you have any comments on the draft guidance about age assurance and age verification, including Ofcom's interpretation of the VSP Framework that VSPs containing pornographic material and material unsuitable for classification must have robust age verification in place?

In the consultation Ofcom says: "For VSPs which specialise in, or have a high prevalence of pornography, we think robust and privacy preserving forms of age verification are key to providing necessary protections for under-18s."

In another section it says: "For VSP providers who specialise in pornographic material as well as VSP services which have a high prevalence of such material, and/or material which is unsuitable for a classification certificate, they should effectively implement robust age verification systems."

These statements are welcome and age verification should be mandatory in our view and there should be strong sanctions if not implemented.

We hope that Ofcom will take account of the BBFC's considerable expertise in the area of age-verification -particularly as regards privacy protecting third-party age

verification- which remains, in our view, the most effective way to ensure that children are meaningfully protected from online pornography.

Question 8: Do you have any views on the practicalities or costs relating to the implementation of robust age verification systems to prevent under-18s from accessing pornographic material and material unsuitable for classification? Please provide evidence to support your answer wherever possible.

There are numerous non-costly methods whereby individuals can obtain Age Verification through digital means. The crucial aspect is not the cost but that they are protecting the privacy of the individual and delivered by third parties not related to the VSP concerned. The government does however need in its digital ID policy to ensure common standards such as those of W3C are met.

Question 9: Do you have any comments on the draft guidance about parental control systems?

Para 4.113 (f) should be strengthened. We believe that BBFC age ratings should be mandatory.

Question 10: Do you have any comments on the draft guidance about the measure regarding complaints processes or on the regulatory requirement to provide for an impartial dispute resolution procedure?

The Government has said that it does not intend to establish an independent resolution mechanism, such as an ombudsman or certified Alternative Dispute Resolution scheme but Ofcom clearly considers that the most effective means of achieving impartiality is to have in place an external, fully independent decision-making body or person, to meet this requirement . We support this as a requirement.

Question 11: Do you have any comments on the draft guidance about media literacy tools and information?

We welcome Ofcom's Make Sense of Media research and information on Media literacy is relevant to many aspects of people's lives, and in relation to online harms.

As OFCOM says media literacy has the potential to improve outcomes by helping people avoid harms, reducing the impact of harms and reducing the creation of harms. But does the government itself accept any kind of outreach duty itself, and where is its own promised Media Literacy Strategy?

Question 12: Do you have any comments on the draft guidance about the practicable and proportionate criteria VSP providers must have regard to when determining which measures are appropriate to take to protect users from harm?

Question 13: Do you have any comments on the draft guidance about assessing and managing risk?

We believe that the nature of the platform users' data which is collected needs to be considered in para 5.1 as well.

Ofcom in the consultation say: "The VSP Regime does not set standards for content which providers should meet, instead it focuses on the measures that providers must consider taking, as appropriate, to protect their users."

We hope the guidance will go further and adopt the risk assessment and management approach discussed in the VSP consultation. Even if it is not possible to make the process set out in section 6 a requirement, it should be strongly encouraged. In that respect we would want to see Para 5.5 strengthened.

Question 14: Do you have any comments on the impact assessment in Annex 1, including the potential impacts to VSPs outlined in tables 1 and 2, and any of the potential costs incurred (including any we have not identified)?

No

Question 15: Do you have any comments on our provisional assessment that the potential costs for providers are proportionate to achieve the regulatory requirements of the regime?

We believe that given the potential harms, the cost of complying with the guidance would be entirely proportionate.

Question 16: Do you have any comments on any other part of the draft guidance?

On enforcement the question is whether OFCOM enforcement guidelines are fit for purpose in regulating VSP's and what kind of assessment has been made.

The Consultation mentions the new Workplan of the DRCF. Given the depth and technical nature of many of the digital regulatory skills required, the proposal for a centre of excellence to provide common expertise is very welcome. As a result, a wider set of digital skills could be built across the regulators such as assessments of use of behavioural data in advertising and of ethical compliance of AI systems, Algorithm inspection, AI audit and monitoring and evaluation of Digital ID and Age Verification solutions.