

Your response

Question	Your response
Question 1: Do you have any comments on Section 3 of the draft guidance on harmful material and related definitions?	<p>Who defines harmful content is a key aspect of any regulatory regime, and it is important that there are strong democratic safeguards, evidence gathering and consultation mechanisms to inform what is classed as harmful, but legal content. This will be a key part of the upcoming Online Safety Bill and techUK and our members are still seeking clarity on how and which harms will be defined in this regime and what mechanisms will be put in place to determine future harms.</p> <p>There is a shared ambition to ensure that the physical, mental and moral development of under 18's is not impaired, however this may also be caused by restricting the benefits children and young people gain when using online services, to acquire knowledge, connect with others, seek enjoyment and self-expression or to improve their digital skills.</p> <p>Providing significant guidance and examples to detail harms resulting from 'Restricted material' will be vital to ensuring any kind of consistent approach. Harmful material which falls under the heading of 'Relevant Harmful material' due to its status contains clear legal requirements, detailed examples and, guidance on the nature of the harm to be prevented.</p> <p>Providing similar evidence-based research and examples for 'Restricted material' will be vital to informing any regime which seeks to get the balance right between enabling under 18s to access the benefits of the online world and trying to reduce exposure to content which might impair their physical, mental and moral development. Without such guidance it is likely we would see large variations between the approaches of different VSPs resulting in possible inconsistencies when removing harmful content.</p>
Question 2: Do you have any comments on the draft guidance about measures which relate to terms and conditions, including how they can be implemented?	<p>Tech companies existing Terms of Service and Community Guidelines rely on transparent and consistent application and enforcement.</p> <p>Helping individuals understand the terms of the service is of utmost importance for companies to support users and mitigate harm, and tech companies strive to provide clear and transparent wording and granularity to enable this.</p> <p>The draft guidance could be clearer by giving examples of what design changes or updates services will need to make to help the user journey. Each service operates in a different way making it important to allow for diverse approaches towards any updates.</p> <p>More broadly, for any tech company that needs to update the content of their terms of service under this regime, detailed guidance and examples of potential harms which result from 'restricted material' will be essential.</p>
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?	<p>Tech companies already operate systems that allow anyone to report users for behaviour they believe violates Terms of Service and Community Guidelines, including harmful content and participation on the service by underage users.</p> <p>We, therefore, align with Ofcom's approach towards this.</p>

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?

Taking any effective or consistent action to provide for additional steps to prevent under 18's from harm when accessing 'Restricted material' will rely on a clear understanding of classifications of restricted material and guidance and support on the potential harms it can cause.

techUK supports an enforcement approach that provides clear definitions and supports the existing Community Guidelines and Terms of Service which individual companies may have in place to eliminate restricted material. This is most effective for the diverse, interactive and ephemeral content which exists on different services.

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?

techUK and our members firmly agree with Ofcom that reporting and flagging are essential to protecting users and tech companies have a number of ways for users to report or flag content.

However, there is a need for the guidance to address some of the potentially adverse outcomes of the proposed approach which may not give sufficient weight to the capacity and diversity of services, nor consider unintended consequences for users.

The draft guidance suggests that VSPs could have to provide a user or non-user complainant with information about the potential outcome of the complaint. It is worth highlighting that users and non-users may contact a VSP for several reasons which will likely need to be handled in a unique way in varying amounts of time.

In addition, there is a suggestion that the complaints process should be available to both users and non-users of a platform's service. It would be useful to understand whether this extends to those complaints relating to the flagging and reporting methods and whether it is required to open this process up to non-users. It is accepted that non-user parents or guardians should be able to complain about parental controls or to report an underage user on a platform's service, but extending this beyond that and specifically by providing anything more than a generic email may open this up to abuse.

This could implicate VSPs by requiring them to provide additional resource to detect whether the complaint is real and should be acted upon. This could be especially problematic for Livestream services where there is limited time to make the judgement given the nature of the service.

The whole of the sector is committed to dedicating efforts towards meaningful reporting and flagging mechanisms for users. techUK would encourage the draft guidance to be more flexible towards companies' existing processes which consider the complexity, individuality, and severity of user complaints.

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?

N/A

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?

N/A

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.

As we have highlighted in [our responses to the ICO's Age Appropriate Design Code](#), age assurance is an area that has significant challenges. There is a risk that regulation would lead to age verification becoming the norm for most, if not all, services in scope, particularly where there is confusion or uncertainty.

There are real questions about whether the wider use of age verification is in the interests of either the user of a service or the service provider. Implemented badly, this could lead to a situation where companies are encouraged to collect more data, including documentation to verify age and introduce log-in measures to minimise disruption to user experience.

Moreover, it is questionable whether robust, privacy centric and user-friendly age-verification tools are sufficiently well developed to be deployed at the scale and pace that would be required for companies to comply.

Many companies have no desire to collect highly personal ID that may be used to verify age, such as passports.

There is a need to consider age-verification and age-assurance methods within the wider context of balancing individual experiences and rights online. The UNCRC outlines how children have rights to explore, play, learn and create online and we believe that any response which might limit children and young people's access to online services needs to be proportionate towards levels of risk on different services and individual rights and experiences. This is not to say that children should have access to age-restricted products, but instead that any approach towards age assurance must consider levels of risk and benefit on a service, coupled with duties to protect the rights of a child online.

If age verification were to become the norm for all services in scope, not only would this provide high burdens on companies but could also lead to the restriction of children's access to vital online services, either because they are unable to purchase new forms of ID, or because some only services may opt to make their services only available to adults to reduce the liability under the regulation. The Safer Internet Centre recently published research which showed how critical the internet is to young people's development and identity. We should therefore be wary of any proposals that would restrict this.

Additionally, some of the measures suggested in this consultation may not lead to sufficiently accurate proof that can be relied upon when suspending an account. Further consideration should be given to how these measures have the potential to disadvantage some individuals, such as – among others – those with disabilities.

Finally, it should also be noted that it is not necessarily the technicality of age verification that is the challenge, it is more a question of logistics and efficacy. For example, while services that create a uniform common standard that can work across its entire service may provide some levels of certainty, this may also increase friction for the user.

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

Community Guidelines and enforcement mechanisms can allow for parents and users to have greater trust in the different platforms and services.

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?

techUK and our members agree with Ofcom that impartial dispute resolution procedures can play an important role in some instances. However, we would welcome further clarity on this point to ensure that draft guidance remains within the boundaries of the Act.

There are a few areas where it would appear that the draft guidance goes beyond the Act, including in regard to whether the removal of content would be handled by the dispute resolution procedure.

It is worth highlighting that the scale of content removed every day is significant and, in some cases, harmful content is often removed by VSPs before it has received any user views. Allowing impartial dispute resolution procedures on the removal of content could overburden VSPs by requiring additional resource for companies to create and operate a dispute resolution structure.

techUK would like to see some clarity on this point to ensure that the guidance is proportionate to the levels of content removal and resource available for VSPs in scope.

Further, in respect of complaints data, we understand that there is an intention that this may feed into and support Ofcom's monitoring of the VSP Regime. It would be helpful to understand whether this information will be required to be provided on a general basis, or whether it will form part of a stricter transparency reporting structure. Furthermore, will services be obligated to provide this information on a routinely basis?

Finally, there appears to be some movement towards setting out the complaints process in an appropriate way for the user, taking into account any vulnerable users. It would be useful to understand whether measures should be taken specifically for those under 18 as opposed to adult users and whether these should be distinctly different.

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

It is vital that we empower and educate users of all ages to navigate the online world safely and securely. Digital literacy must be a key priority and focus for changing behaviours over time and instilling 'digital civility'.

Education can play an important role in helping society develop digital behaviours and skills online, enabling kinder and more equal individual experiences. Companies already either create their own tools to help empower and educate – whether for children, their parents, teachers or vulnerable adults, or partner with other providers to do this.

It is vital that regulation does not cut across this work, but instead builds on it to ensure there is a concerted effort to create an inclusive strategy that responds to the varying needs of users. Ofcom could therefore seek to make available some of its guidance on media literacy in a consumable and usable format. This would be particularly helpful for smaller firms that want to support their users via education.

<p>Question 12: Do you have any comments on the with the draft guidance provided 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?</p>	<p>It's vital that all the criteria listed are taken into account.</p> <p>Similar to the ICO, Ofcom could also provide illustrative examples in its guidance to help companies understand the type of action they should be taking that is relevant to their operating model, size and type of content displayed.</p>
<p>Question 13: Do you have any comments on the draft guidance about assessing and managing risk?</p>	<p>More guidance and explanation should be given to help VSPs respond to new emerging and fast spreading risks. For example, a piece of emergent content that is constructed in such a way or linked to additional or third-party content that allows it to slip past common safeguarding mechanisms. In this case the focus is not on preparation but reaction to emergent risks that could not be foreseen. This is currently not well covered in the guidance.</p> <p>Furthermore, there is concern around the assessment of the criteria and the provisions of availability of data to Ofcom. There are multiple forms of international and domestic regulations that have similar provisions, such as the draft Online Safety Bill and Digital Services Act, and it would be useful for Ofcom to provide further clarity on how this risk assessment process might align with these regimes.</p> <p>There is a real risk of overlap between existing and upcoming regimes, ranging from the Age-Appropriate Design Code to the VSP regime and the draft Online Safety Bill, and we urge regulators to avoid unnecessary duplication when collecting the same information.</p> <p>Not only does this have the potential to overburden smaller companies but could also undermine the existing processes in place which are often company specific to ensure that they take into account the nature of the service.</p>
<p>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)?</p>	<p>N/A</p>
<p>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?</p>	<p>N/A</p>
<p>Question 16: Do you have any comments on any other part of the draft guidance?</p>	<p>N/A</p>