

Response to the Ofcom Call for Evidence

The Online Safety Bill – Roadmap

This response from the Digital Policy Alliance (DPA) follows on from an invitation by Ofcom to focus on areas where our members can collectively provide robust evidence to help Ofcom “understand the risk of harm on different services, and the benefits and costs of different mitigations.” The focus here is on the protection of children, and age verification (AV) solutions for access to age-restricted websites.

Consistency in Mitigation

Firstly, we would like to respond to the specific Ofcom intention stated in the Roadmap that *“To ensure consistency in our approach to regulating pornographic content across the board – whether provider pornographic content or user-generated pornographic content - we are currently planning to consult on guidance and Codes covering the protection of children from pornographic material produced by providers of pornographic content and the protection of children from user generated pornographic content together. According to current planning assumptions, this would mean that commercial pornography providers, services hosting user-generated pornography and search services should prepare to engage with our consultation regarding measures to prevent children accessing pornographic material around Autumn 2023.”*

The DPA considers that this approach would cause yet more delay to the protection of children regarding access to pornography sites. This means that commercial pornography providers providing content will likely not be regulated in the UK until the end of 2024 at the earliest, and maybe significantly later. This is completely unacceptable and further frustrates the Government's long-standing aim of “making the UK the safest place in the world to be online” - and especially so for children, which we believe should be the regulator's primary concern. It should be remembered that Parliament legislated for age checks for accessing adult content online in 2017 and that UK adult websites have been legally obliged to age verify users since 2012.

Moreover, before Ofcom was appointed as the regulator for online safety in the UK, there was a consultation by the BBFC to which the DPA and many of its members and others, including owners of commercial pornography sites, responded. The DPA has ‘been here before’ in written submissions to Government, and so another consultation in the same area is therefore unnecessary. Furthermore, the NSPCC has warned that more than 3,500 online child abuse crimes will take place every month that the Online Safety Bill (OSB) is delayed (www.independent.co.uk/news/uk/politics/bill-nspcc-conservative-home-office-england-b2132812.html) – and the longer Ofcom takes on its consultation, the further into the future real-world child protection is pushed. With UK sites having now been successfully running AV since 2012 why would the Government not simply apply the same requirements to non-UK sites to do the same?

There have been no significant changes to the pornographic industry or the age verification sector that would render the previous consultation and its findings out-of-date, and therefore we would recommend that time and effort could be saved by adopting the previous consultation.

We therefore also recommend that Ofcom reassesses its timeline to bring it forward and ensure that children will be kept safe online from stumbling across or accessing pornography as a matter of priority. The Government has promised to do so for some 5 years, initially through Part 3 of the Digital Economy Act 2017, but without delivering, leaving children potentially exposed to serious harm.

We ask, why should 'consistency' override the urgent need to protect children, especially when the application of effective AV solutions is and has been readily available for so long? The DPA has significant experience in this space, and is willing to engage with Ofcom, if this is considered helpful, drawing on the extensive and practical expertise of its members and providing demonstrations of available, operational, privacy-protecting, digital AV solutions if requested. The argument that Information Society Services (ISS) could be confused or overwhelmed by different requirements being applied in parallel is not valid, because the Bill clearly separates sites in scope of Part 5 from the wider scope of the Bill.

Age-Appropriate Protection

Age-appropriate protection for children can be applied immediately through proven, cost-effective, privacy-protecting solutions using trusted independent third-party AV providers. These solutions which the public and industry strongly support are already being used both commercially and by the Government's own agencies. Moreover, there are a number of AV providers which can demonstrate the effectiveness of their solutions to Ofcom if considered helpful, in a number of scenarios, for example:

- How does a 14-year-old verify their age?
- How do you preserve anonymity for those wishing to use the AV process?
- How do you ensure that parental controls are only set by a legal parent or guardian? (Please note that AV within the OS (operating system) is not yet available in the UK - and we wish to demonstrate solutions that are available today).

We agree with Children's Commissioner Dame Rachel de Souza, who on 26th July 2022 has said: "We are long overdue protections for children in the online world" adding that "We need the Online Safety Bill as quickly as possible." - www.newstatesman.com/spotlight/2022/07/children-online-safety-bill.

The failure to implement robust age checks on online pornography exposes children to a number of detrimental effects, including brain development, psychological damage and dehumanising and behavioural issues. One way to bring forward child protection measures quickly is via implementation of Part 3 of the DEA – which has not been repealed - or Part 5 of the OSB. If this is not possible, we strongly recommend that Ofcom, in relevant communications with Government, calls for the powers for requiring effective AV to be ready for immediate implementation once the Bill receives Royal Assent.

Pricing Models

There are some concerns over Ofcom's request to age verification providers to provide information about pricing. Without a clear understanding of the regulatory regime that Ofcom will create, it is extremely difficult for providers to provide true accuracy around these prices. There is a risk that anything Ofcom publishes (proactively or as a result of freedom of information requests) could itself impact the long-term pricing of online age checks.

No supplier can predict the pricing given via any procurement process as this will ultimately be affected by the regulations, the client, the volume, the procurement process, market intelligence, recent wins and losses, and the providers capital position, to name just a few. There are however many pricing models already being offered by AV providers for commercial supply of their solutions which AV providers would be more than happy to supply to Ofcom to help give an indication of potential.

For further information, please visit www.dpalliance.org.uk/about-dst-group/.

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