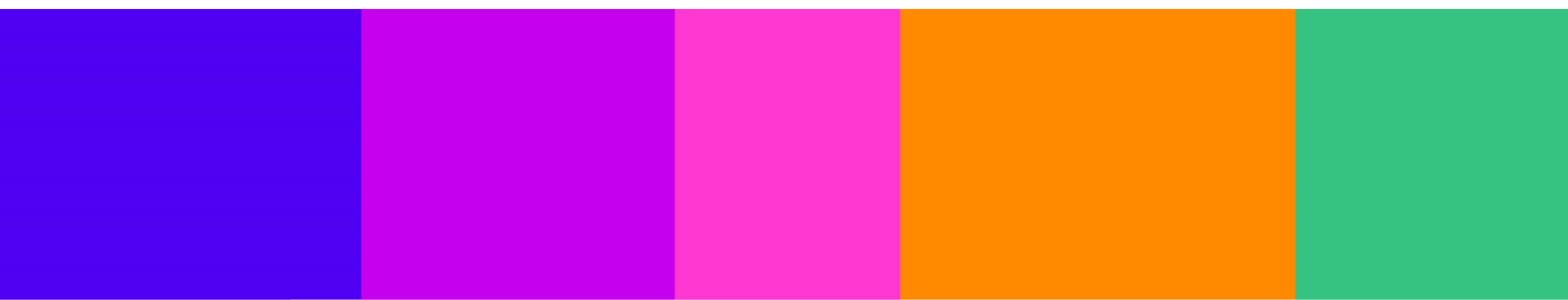




Consultation response form

Please complete this form in full and return to protectingchildren@ofcom.org.uk.

Consultation title	Consultation: Protecting children from harms online
Organisation name	Open Rights Group



Your response

Question	Your response
<p>Volume 2: Identifying the services children are using Children’s Access Assessments (Section 4).</p>	
<p>Do you agree with our proposals in relation to children’s access assessments, in particular the aspects below. Please provide evidence to support your view.</p> <ol style="list-style-type: none"> 1. Our proposal that service providers should only conclude that children are not normally able to access a service where they are using highly effective age assurance? 2. Our proposed approach to the child user condition, including our proposed interpretation of “significant number of users who are children” and the factors that service providers consider in assessing whether the child user condition is met? 3. Our proposed approach to the process for children’s access assessments? 	<p>The Act takes a very UK-centric approach which does not seem to fully recognise the global and networked nature of the Internet. It would appear than any service accessible to UK users should comply with the Act, register with Ofcom and conduct children’s access assessments and comply with other duties.</p> <p>It is unclear how non or semi-commercial services not located in the UK are meant to comply with these duties, which are likely to be widely ignored by such sites.</p> <p>There has since the Act was drafted been a proliferation of services using the ActivityPub protocol for user to user communications. These include blogging, link aggregators, microblogging, photo sharing, reel and video publishing services. There are over 13 million registered users, including large numbers in the European Union, Japan and USA. Additionally many interoperate with commercial services such as Wordpress blogs and partially with Meta’s Threads which currently allows its US users to enable following by users on external services.</p> <p>Many of the services other than Threads are volunteer run and most likely unaware or unable to comply with Ofcom’s requirements, yet provide a safer environment than many or most commercial platforms.</p> <p>A second class of services includes Wikimedia websites and other Wikis, which allow users to talk to each other, within their own rules. Wikimedia in particular is averse to tracking or verifying the age of individuals. It is unclear that there is significant risk, but their services are clearly at scale accessible to children. Thus at the very least a compliance burden is being created for these non-commercial, public benefit services. It is important that they are not brought into scope for age verification and other identifying technologies.</p> <p>Ofcom’s advice should make it clear that such services are not in scope, and develop further guidance to allow minimal, cost free and unobtrusive compliance where</p>

Question	Your response
	risks are low but services such a Wikimedia appear to be in scope.
<p>Volume 3: The causes and impacts of online harm to children</p> <p>Draft Children’s Register of Risk (Section 7)</p>	
<p>Proposed approach:</p> <p>4. Do you have any views on Ofcom’s assessment of the causes and impacts of online harms? Please provide evidence to support your answer.</p> <p>a. Do you think we have missed anything important in our analysis?</p> <p>5. Do you have any views about our interpretation of the links between risk factors and different kinds of content harmful to children? Please provide evidence to support your answer.</p> <p>6. Do you have any views on the age groups we recommended for assessing risk by age? Please provide evidence to support your answer.</p> <p>7. Do you have any views on our interpretation of non-designated content or our approach to identifying non-designated content? Please provide evidence to support your answer.</p> <p>Evidence gathering for future work:</p> <p>8. Do you have any evidence relating to kinds of content that increase the risk of harm from Primary Priority, Priority or Non-designated Content, when viewed in combination (to be considered as part of cumulative harm)?</p>	<p>While the list of risks is quite comprehensive, it is notable that the risk of absence of access to content is not noted as a risk to children and young adults. There is also a risk of lack of nuance in the systems being promoted between the rights and needs of children and young adults.</p> <p>It is clear that many content controls aim at restricting advice and information on topics such as drugs, sex and sexuality. Other areas of concern that can be restricted may include issues of discrimination, bullying and violence.</p> <p>Furthermore, inter personal support and communication can be both an area of risk and benefit, but is often relied on by people in vulnerable situations, including children and young adults.</p> <p>In promoting classification of content, there is a significant risk of restriction of access and reduction of perspective and support, as well as the broader right to freedom of expression, which exists for children and young adults.</p> <p>It is extremely important for Ofcom to listen to groups that work with children and young adults with a sensitivity to their rights as policy is developed.</p>

Question	Your response
<p>9. Have you identified risks to children from GenAI content or applications on U2U or Search services?</p> <p>a) Please Provide any information about any risks identified</p> <p>10. Do you have any specific evidence relevant to our assessment of body image content and depressive content as kinds of non-designated content? Specifically, we are interested in:</p> <p>a) (i) specific examples of body image or depressive content linked to significant harms to children,</p> <p>b. (ii) evidence distinguishing body image or depressive content from existing categories of priority or primary priority content.</p> <p>11. Do you propose any other category of content that could meet the definition of NDC under the Act at this stage? Please provide evidence to support your answer.</p>	
Draft Guidance on Content Harmful to Children (Section 8)	
<p>12. Do you agree with our proposed approach, including the level of specificity of examples given and the proposal to include contextual information for services to consider?</p> <p>13. Do you have further evidence that can support the guidance provided on different kinds of content harmful to children?</p> <p>14. For each of the harms discussed, are there additional categories of content that Ofcom</p> <p>a) should consider to be harmful or</p>	<p>The boundaries of the content types identified are problematic when machine identified or classified by individuals at speed. As noted above, material which is beneficial and protective can easily be swept up.</p> <p>It is necessary to explain how the content that young people need will be protected when it is close in subject matter to that which Ofcom seeks to restrict for those individuals. This requires incentives to be placed on services to make the right decisions, as well as review processes.</p> <p>Without clear safeguards, Ofcom’s provisional assertion that rights should not be unduly affected (8.44) seems optimistic.</p> <p>The approach of exempting news content and to a lesser degree journalistic content appears difficult to enforce in</p>

Question	Your response
<p>b) consider not to be harmful or</p> <p>c) where our current proposals should be reconsidered?</p>	<p>practice, and we welcome more detail on how these are going to be identified and protected, and how Ofcom will approach attempts to 'game' boundaries, for example by users circulating newspaper content which is designed to provoke prejudicial feelings and debate and could lead to bullying and discriminatory interactions.</p>
<p>Volume 4: How should services assess the risk of online harms?</p> <p>Governance and Accountability (Section 11)</p>	
<p>15. Do you agree with the proposed governance measures to be included in the Children's Safety Codes?</p> <p>a) Please confirm which proposed measure your views relate to and explain your views and provide any arguments and supporting evidence.</p> <p>b) If you responded to our Illegal Harms Consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.</p> <p>16. Do you agree with our assumption that the proposed governance measures for Children's Safety Codes could be implemented through the same process as the equivalent draft Illegal Content Codes?</p>	<p>As stated above, duties for small overseas operators run by volunteers to name responsible persons and make and record assessments seems unrealistic. Another approach could be to allow governance models in their own countries to take care of the relevant approach and local compliance, until and unless such services are sufficiently relevant to the UK.</p> <p>Likewise care must be applied to avoid burdening public interest services such as Wikimedia with unnecessary compliance tasks.</p>
<p>Children's Risk Assessment Guidance and Children's Risk Profiles' (Section 12)</p>	
<p>17. What do you think about our proposals in relation to the Children's Risk Assessment Guidance?</p> <p>a) Please provide underlying arguments and evidence of efficacy or risks that support your view.</p> <p>18. What do you think about our proposals in relation to the Children's Risk</p>	<p>Confidential? – Y / N</p>

Question	Your response
<p>Profiles for Content Harmful to Children?</p> <p>a) Please provide underlying arguments and evidence of efficacy or risks that support your view.</p> <p>Specifically, we welcome evidence from regulated services on the following:</p> <p>19. Do you think the four-step risk assessment process and the Children’s Risk Profiles are useful models to help services understand the risks that their services pose to children and comply with their child risk assessment obligations under the Act?</p> <p>20. Are there any specific aspects of the children’s risk assessment duties that you consider need additional guidance beyond what we have proposed in our draft?</p> <p>21. Are the Children’s Risk Profiles sufficiently clear and do you think the information provided on risk factors will help you understand the risks on your service?</p> <p>a) If you have comments or input related to the links between different kinds of content harmful to children and risk factors, please refer to Volume 3: Causes and Impacts of Harms to Children Online which includes the draft Children’s Register of Risks.</p>	
<p>Volume 5 – What should services do to mitigate the risk of online harms</p> <p>Our proposals for the Children’s Safety Codes (Section 13)</p>	

Question	Your response
<p>Proposed measures</p> <p>22. Do you agree with our proposed package of measures for the first Children’s Safety Codes?</p> <p>a) If not, please explain why.</p> <p>Evidence gathering for future work.</p> <p>23. Do you currently employ measures or have additional evidence in the areas we have set out for future consideration?</p> <p>a) If so, please provide evidence of the impact, effectiveness and cost of such measures, including any results from trialling or testing of measures.</p> <p>24. Are there other areas in which we should consider potential future measures for the Children’s Safety Codes?</p> <p>a) If so, please explain why and provide supporting evidence.</p>	<p>Confidential? – Y / N</p>

Developing the Children’s Safety Codes: Our framework (Section 14)

25. Do you agree with our approach to developing the proposed measures for the

Children’s Safety Codes?

a) If not, please explain why.

26. Do you agree with our approach and proposed changes to the draft Illegal Content Codes to further protect children and accommodate for potential synergies in how systems and processes manage both content harmful to children and illegal content?

a) Please explain your views.

27. Do you agree that most measures should apply to services that are either large services or smaller services that present a medium or high level of risk to children?

28. Do you agree with our definition of ‘large’ and with how we apply this in our recommendations?

29. Do you agree with our definition of ‘multi-risk’ and with how we apply this in our recommendations?

30. Do you agree with the proposed measures that we recommend for all services, even those that are small and low-risk?

Age assurance measures (Section 15)

31. Do you agree with our proposal to recommend the use of highly effective age assurance to support Measures

These proposals are very problematic. It is good that Ofcom recognises the potential for restriction to adults’ access to content.

<p>AA1-6? Please provide any information or evidence to support your views.</p> <p>a) Are there any cases in which HEAA may not be appropriate and proportionate?</p> <p>b) In this case, are there alternative approaches to age assurance which would be better suited?</p> <p>32. Do you agree with the scope of the services captured by AA1-6?</p> <p>33. Do you have any information or evidence on different ways that services could use highly effective age assurance to meet the outcome that children are prevented from encountering identified PPC, or protected from encountering identified PC under Measures AA3 and AA4, respectively?</p> <p>34. Do you have any comments on our assessment of the implications of the proposed Measures AA1-6 on children, adults or services?</p> <p>a) Please provide any supporting information or evidence in support of your views.</p> <p>35. Do you have any information or evidence on other ways that services could consider different age groups when using age assurance to protect children in age groups judged to be at risk of harm from encountering PC?</p>	<p>The proposals themselves are likely to cause much greater tracking and profiling of individuals, and incentivise further bad practice which is at the root of the problematic business model of online platforms, that is collection of data and automated decision making, for the purposes of content promotion and advertising promotion.</p> <p>It is unclear that the balance is correctly struck between the rights of adults to receive and impart information without undue cost and restriction, and the desire to protect children.</p> <p>It is also unclear whether services will be prepared to implement some of these measures, especially where they have smaller UK audiences. In cases where services and content may be withdrawn, Ofcom could create very significant free expression costs and embarrassment to the UK, while risks to children may in practice be relatively small. This is especially true where the content in question is adult sexual material, ie pornography, which is incidentally available but not pervasive. Given that such material can be controlled for children on device, by restricting the sites at device level, it is not at all clear that the approach would be correct.</p> <p>In such circumstances, we would recommend that age assurance at the site itself is not pursued.</p>
<p>Content moderation U2U (Section 16)</p>	
<p>36. Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.</p>	<p>Ofcom underestimates the free expression risks of content moderation at scale. Regarding copyright, for example, there is already widespread evidence that systems especially as automated do not respect the rights of users and frequently dissuade appeals.</p>

<p>37. Do you agree with the proposed addition of Measure 4G to the Illegal Content Codes?</p> <p>a) Please provide any arguments and supporting evidence.</p>	<p>We are particularly concerned with the assertion at 16.49 that “services have incentives to limit the amount of content that is wrongly actioned”. In our experience, this is not true, generally, because users have a high cost of exit and little choice but to tolerate a platform’s decisions. Until there is general interoperability between services that allow users to exercise choice, or other incentives such as penalties for poor decisions, platforms will not have sufficient regard to accuracy.</p> <p>It is unclear that Ofcom’s proposals will target accuracy in terms of incorrect takedowns or restriction without clear and specific incentives for accuracy.</p>
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Search moderation (Section 17)

<p>38. Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.</p> <p>39. Are there additional steps that services take to protect children from the harms set out in the Act?</p> <p>a) If so, how effective are they?</p> <p>40. Regarding Measure SM2, do you agree that it is proportionate to preclude users believed to be a child from turning the safe search settings off?</p> <p>The use of Generative AI (GenAI), see Introduction to Volume 5, to facilitate search is an emerging development, which may include where search services have integrated GenAI into their functionalities, as well as where standalone GenAI services perform search functions. There is currently limited evidence on how the use of GenAI in search services may affect the implementation of the safety measures as set out in this code. We welcome further evidence from stakeholders on the following questions</p>	<p>Restricting search to filtered when not logged in (SM2) is deeply problematic. Not logging into search such as Google is a privacy benefit and a choice which adults should be able to exercise without penalty.</p> <p>Some search services, eg DuckDuckGo, do not track users or require log in. This is a privacy measure. It would not be possible for such services to implement these measures, so may in this circumstance withdraw from the UK market. This would impact free expression, privacy, competition and user choice, for what is a minimal risk posed by search, which can also be managed on device by adults supervising their children.</p>
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and please provide arguments and evidence to support your views:

41. Do you consider that it is technically feasible to apply the proposed code measures in respect of GenAI functionalities which are likely to perform or be integrated into search functions?

42. What additional search moderation measures might be applicable where GenAI performs or is integrated into search functions?

User reporting and complaints (Section 18)

43. Do you agree with the proposed user reporting measures to be included in the draft Children’s Safety Codes?

a) Please confirm which proposed measure your views relate to and explain your views and provide any arguments and supporting evidence.

b) If you responded to our Illegal Harms Consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.

44. Do you agree with our proposals to apply each of Measures UR2 (e) and UR3 (b) to all services likely to be accessed by children for all types of complaints?

a) Please confirm which proposed measure your views relate to and explain your views and provide any arguments and supporting evidence.

b) If you responded to our Illegal Harms Consultation and this is relevant to your response here, please

We do not agree that the rights implications of reporting and complaints are limited, in particular the lack of good put-back complaints and appeals is a significant problem.

Processes within companies are always limited and flawed. Whether content is removed for reasons of T&Cs, compliance or legality, external processes are necessary for resolution. With allegedly unlawful content, appeals to the courts should be possible, as envisaged in both German and EU law. This is missing from the UK procedures and leaves a significant gap for UK users, whose challenges would need to be made under the terms of their contract, which would be onerous in the extreme.

signpost to the relevant parts of your prior response.

45. Do you agree with the inclusion of the proposed changes to Measures UR2 and UR3 in the Illegal Content Codes (Measures 5B and 5C)?

a) Please provide any arguments and supporting evidence.

Terms of service and publicly available statements (Section 19)

46. Do you agree with the proposed Terms of Service / Publicly Available Statements measures to be included in the Children’s Safety Codes?

a) Please confirm which proposed measures your views relate to and provide any arguments and supporting evidence.

b) If you responded to our illegal harms consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.

47. Can you identify any further characteristics that may improve the clarity and accessibility of terms and statements for children?

48. Do you agree with the proposed addition of Measure 6AA to the Illegal Content Codes?

a) Please provide any arguments and supporting evidence.

Recommender systems (Section 20)

49. Do you agree with the proposed recommender systems measures to be included in the Children’s Safety Codes?

a) Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence.

b) If you responded to our illegal harms consultation and this is relevant to your response here, please signpost

ORG is very concerned by recommender systems which are related to profiling of users, adtech delivery and the attention market.

However we think that Ofcom may be overestimating the potential of these recommender systems, which are largely content agnostic in our understanding. The agnosticism causes the problematic interactions, as the nature of content is only evaluated for virality.

Ofcom’s proposals are therefore problematic because they rely on combining recommendation with automated content classification, which is at best crude and gameable.

<p>to the relevant parts of your prior response.</p> <p>50. Are there any intervention points in the design of recommender systems that we have not considered here that could effectively prevent children from being recommended primary priority content and protect children from encountering priority and non-designated content?</p> <p>51. Is there any evidence that suggests recommender systems are a risk factor associated with bullying? If so, please provide this in response to Measures RS2 and RS3 proposed in this chapter.</p> <p>52. We plan to include in our RS2 and RS3, that services limit the prominence of content that we are proposing to be classified as non-designated content (NDC), namely depressive content and body image content. This is subject to our consultation on the classification of these content categories as NDC. Do you agree with this proposal? Please provide the underlying arguments and evidence of the relevance of this content to Measures RS2 and RS3.</p> <ul style="list-style-type: none"> • Please provide the underlying arguments and evidence of the relevance of this content to Measures RS2 and RS3. 	<p>A better approach would be work with competition authorities to open up services to allow competing recommendation and prioritisation services, and also to allow content to be received and shared through competing services. This is already partially available with Threads, and wholly with BlueSky and ActivityPub services.</p> <p>By placing recommendation engines in the hands of users, incentives can be introduced to improve their suitability. Users do not necessarily wish to be shown a narrow kind of provocative content, but are given this content because it makes them engage; however stressful engagement is not necessarily the experience that they desire or would choose given a choice.</p> <p>Likewise for children, multiple differing ways to receive content would allow adults to choose and provide better ways for them to find and receive content.</p>
<p>User support (Section 21)</p>	
<p>53. Do you agree with the proposed user support measures to be included in the Children’s Safety Codes?</p>	<p>Confidential? – Y / N</p>

a) Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence.

b) If you responded to our Illegal harms consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.

Search features, functionalities and user support (Section 22)

54. Do you agree with our proposals? Please provide underlying arguments and evidence to support your views.

55. Do you have additional evidence relating to children's use of search services and the impact of search functionalities on children's behaviour?

56. Are there additional steps that you take to protect children from harms as set out in the Act?

a) If so, how effective are they?

As referenced in the Overview of Codes, Section 13 and Section 17, the use of GenAI to facilitate search is an emerging development and there is currently limited evidence on how the use of GenAI in search services may affect the implementation of the safety measures as set out in this section. We welcome further evidence from stakeholders on the following questions and please provide arguments and evidence to support your views:

57. Do you consider that it is technically feasible to apply the proposed codes measures in respect of GenAI functionalities which are likely to perform or be integrated into search

functions? Please provide arguments and evidence to support your views.

Combined Impact Assessment (Section 23)

58. Do you agree that our package of proposed measures is proportionate, taking into account the impact on children's safety online as well as the implications on different kinds of services?

For the reasons above, no. Restrictions based on age assurance and for search are particularly disproportionate.

Statutory tests (Section 24)

59. Do you agree that our proposals, in particular our proposed recommendations for the draft Children's Safety Codes, are appropriate in the light of the matters to which we must have regard?

a) If not, please explain why.

Annexes

Impact Assessments (Annex A14)

60. In relation to our equality impact assessment, do you agree that some of our proposals would have a positive impact on certain groups?

61. In relation to our Welsh language assessment, do you agree that our proposals are likely to have positive, or more positive impacts on opportunities to use Welsh and treating Welsh no less favourably than English?

a) If you disagree, please explain why, including how you consider these proposals could be revised to have positive effects or more positive effects, or no adverse effects or fewer adverse effects on opportunities to use Welsh and treating Welsh no less favourably than English.

The proposals are likely to have negative impacts on people from minority language, culture and sexual minorities, given the reliance on content curation, which generally disfavours minority content. This is well established. While we agree that Ofcom's proposals aim to help these groups, the paradigm of "harmful content" and attempts to restrict access to content by age, ability to register or identify, and by content classification have significant likely impacts for minority groups which have not been explored in the impact assessment.

Regarding the Welsh language, Ofcom could and should assess the efficacy of content classification and restrictions, as well as the ability to use Welsh within the commercial settings of platform moderation systems. These are almost certainly poor or absent. The opportunity to ensure that Welsh can be used when Welsh lan-

	guage content is flagged, removed, reviewed or appealed should be present, for obvious reasons, but this has been missed by Ofcom's assessment.
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