

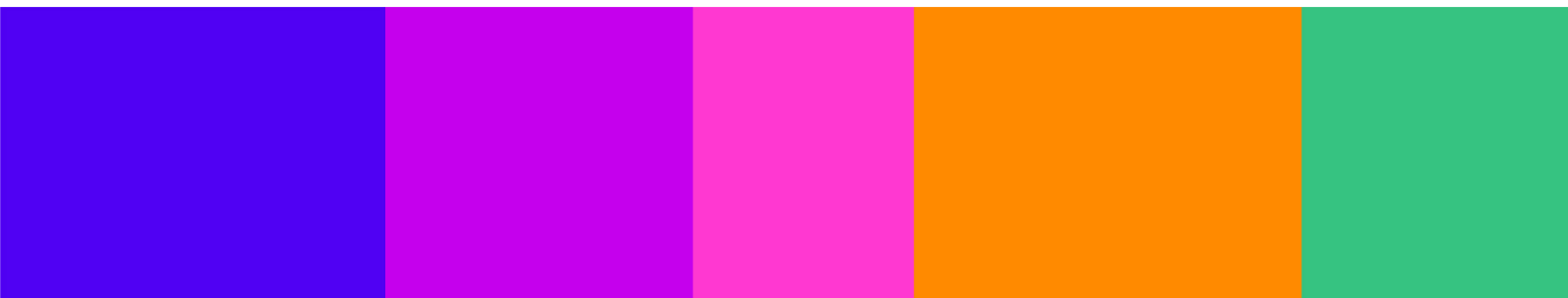


# Consultation response form

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Please complete this form in full and return to [protectingchildren@ofcom.org.uk](mailto:protectingchildren@ofcom.org.uk).

<b>Consultation title</b>	Consultation: Protecting children from harms online
<b>Organisation name</b>	Wikimedia Foundation





The Wikimedia Foundation is grateful for the opportunity to address Ofcom as part of the “Protecting Children from Harms Online” consultation. Ofcom’s efforts to create a safer internet align clearly with our goals to ensure a safe environment for users of all volunteer-run projects hosted by the Wikimedia Foundation, including those under the age of 18. The Foundation appreciates the opportunity to work with Ofcom to advance a common goal: an internet where people of all ages can safely and freely access and share information.

## About the Wikimedia Foundation and the Wikimedia Projects

The Foundation is a nonprofit organisation headquartered in the United States (US) that hosts and supports [fourteen global, volunteer-run free and open knowledge projects](#), including Wikipedia (referred to as “the Wikimedia projects” throughout this document). The Foundation’s public interest mission is to empower and engage people around the world to participate in the sum of all human knowledge. Anyone, anywhere, can contribute to the Wikimedia projects by creating and curating educational content under free and open copyright licences. The Foundation is responsible for ensuring that everyone, everywhere, can access, contribute to, and edit the Wikimedia projects—in over 300 languages. A global community of volunteers works constantly to improve the projects’ encyclopaedic nature and quality by means of content policies that they themselves have developed and enforced over the course of more than two decades. Such community policies define what kind of content can be made available on the Wikimedia projects as well as how it is presented and discussed. Their purpose is to ensure that the content is reliably sourced and presented in a manner appropriate for an encyclopaedia, while also preventing illegal or harmful content from being available on the platforms.

## Global public interest projects and national regulation

Notably, the Wikimedia projects represent a truly global collaborative effort, which requires that volunteer editors see the same version of the platforms’ content no matter where they are based. For these reasons, the Wikimedia projects are organised by language, not by jurisdiction or geography, and content does not change according to either of the latter two. This is particularly true of the English language version of Wikipedia, which is contributed to and read by residents of many countries outside the United Kingdom (UK). (It is also notable that other language versions of Wikipedia, such as Chinese, Farsi, Urdu, and a number of European languages, have significant numbers of UK-based readers and editors.) A national law should not dictate what users in, for example, the US, Canada, or New Zealand are able to access on our projects in their native language. Restricting or changing the content of the Wikimedia projects to meet the expectations of national governments or regulators would make it so

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difficult for volunteer editors to collaborate that the existing organisation and functionality of the projects would be severely threatened, with catastrophic implications for other information-providing platforms and the wider online information ecosystem.

For the reasons explained above, actions taken to ensure safety for Wikimedia project users must strike a balance with the continuation of effective community-led content creation and moderation practices and must also align with international privacy and human rights standards to safeguard freedom of expression, association, and access to knowledge.

We believe the educational and encyclopaedic nature of Wikipedia and other Wikimedia projects make them unique in the potential risks they present to children, the relatively low severity of those risks, and the tailored approach which must be taken to risk mitigation. The independent [Child Rights Impact Assessment](#) that the Foundation commissioned and published in January 2024 supports this conclusion. We commissioned the assessment and report because safety is important to fundamental rights as well as to inclusive, equitable access to the projects. The Child Rights Impact Assessment specifically evaluated risks to children based on three distinct categories: as readers, as volunteer editors, and as attendees at in-person events. The report noted that Wikimedia's model does not present the same risks as those of for-profit platforms whose business models aim to maximise advertising revenue by targeting users with highly-engaging, but often unreliable or unsuitable, content.

Wikipedia and other Wikimedia projects are non-commercial and the Foundation is a nonprofit organisation. Our primary source of revenue comes from individual donations, [averaging about £12](#) each. Due to our limited resources and the unique nature of the volunteer-run projects that we support, Ofcom's proposed requirements pose unique and disproportionate challenges for the Foundation.

An age assurance requirement would force us to make substantial technical changes to the user interface in order to collect new categories of personally identifying data about users of all ages across globe-spanning projects. Such a step would run counter to Wikimedia's fundamental values and unwavering [commitment to protect and respect the human rights](#) of readers and editors across the world, particularly freedom of expression, association, privacy, and access to knowledge. Personal data collected about readers and volunteer editors in order to fulfil an age assurance requirement would render this data vulnerable to theft, government access requirements, and surveillance—not only by authoritarian governments, but also by other powerful entities unhappy with their portrayal on Wikipedia.

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## Focus of this submission

To address our concerns, we will focus below on several points highlighted in Ofcom's proposal:

- 1) balancing a platform's risk level and engagement depth, particularly regarding the term "significant number" of children;
- 2) recognizing the unique nature and low-risk profile of Wikimedia projects as demonstrated by the Child Rights Impact Assessment we commissioned;
- 3) considering the context and operational models of different platforms; and,
- 4) assessing the implications of imposing extensive documentation requirements.

Finally, we will offer recommendations for a more proportionate regulatory framework that aligns with our values and mission, while also supporting the regulation's critical objective of protecting children online across the UK.

### 1. "Significant number of" children

**Concern:** It is disproportionate to impose a range of obligations on a platform based on a basic user count alone, without properly engaging with the risk/benefit dimension.

**Recommendation:** Ofcom's guidance to help platforms evaluate whether they meet the child user condition should explicitly state that platforms should also evaluate:

- 1) substance of the engagement, including time spent and/or depth of engagement; and,
- 2) inherent level of risk and/or extent to which risk-associated features are central to user experience (e.g., recommendation algorithms, private messaging, etc.).

Certain Online Safety Act (OSA) requirements apply to platforms that are likely to be accessed by a "significant number" of children. As Ofcom notes, this important legal term of art is undefined in the OSA. Ofcom's draft guidance on how the statutory test for a "*significant number* of under 18s" should be interpreted currently only acknowledges that for riskier services what is considered to be a "significant" number of under-18s might be a small number. We appreciate Ofcom's recommendation that a holistic, contextual view be taken when considering whether a

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platform meets the “child user” condition,<sup>1</sup> and we agree that for a relatively high risk, highly-engaging environment, even a relatively modest number of underage users could be considered “significant.” Logically, the converse ought to equally be true, but Ofcom has not offered guidance in such cases.

In order to assure that controls do not unnecessarily reduce children’s ability to exercise their rights, the Foundation recommends that Ofcom expand its guidance around how services should evaluate whether the child user condition is met according to the specific and holistic context of the platform. An educational and/or encyclopaedic public interest platform like Wikipedia, to the extent that users under the age of 18 access it, likely poses lesser risk than a commercial platform that hosts and amplifies large amounts of potentially harmful content, like pornography, to a smaller number of child users who can be targeted using the platform’s algorithmic recommender systems, and who may be exposed to content that they did not actively seek. The nature of the content and its environment are very different on such a platform than on a non-commercial online encyclopaedia, as is the degree to which users, including children, can be exposed to harmful content.

As Ofcom’s own studies reveal, an average user spends *41x less time* on Wikimedia projects than they do on a social media website.<sup>2</sup> The “significance” of their usage, from a risk/safety perspective, is not the same. A simplistic focus on “numbers” of users would undermine the proportionality and credibility of the regulatory framework. Unfortunately, the holistic factors that Ofcom currently lists as considerations focus primarily on determining in the affirmative that a service has a “significant number” of child users, offering little guidance on what evidence may be provided to dispute Ofcom’s determination besides using highly effective age assurance. As a result, not only does this requirement place too much emphasis on the use of intrusive age assurance technology, it punishes services that do not employ those technologies by having to meet a more ambiguous evidence standard.

The requirement further ignores the fact that some platforms do not employ age assurance technologies in part because their readers and contributors use the service to obtain information, including on sensitive topics. As a result, the public interest or charity organisations that operate public interest, educational, non-commercial platforms need to be more cautious and protective of their users’ privacy. Going back to the example posed above, greater actual

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<sup>1</sup> As defined in Section 35(3) of the OSA.

<sup>2</sup> See the “Top Organizations” tab of the “Online” interactive data at [Communications Market Report 2023: Interactive data - Ofcom](#) for the average time spent per visitor per month on Wikimedia projects (i.e., 19.24 minutes) compared to the equivalent figure for TikTok (i.e., 791.26 minutes).

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harms could occur on commercial “attention-driven” websites. Absent such nuance on the specifics of platforms, educational and/or encyclopaedic platforms would be compelled to take on unjustified burdens—and expose their users to unnecessary and disproportionate human rights risks under the OSA.

## 2. Age assurance

**Concern:** Implementing age assurance methods contravenes the fundamental nature of the Wikimedia platforms, values, and mission.

**Recommendation:** Consider a more flexible and context-sensitive approach that exempts platforms with public interest missions and educational value from the age assurance requirement.

Wikipedia and the other non-commercial Wikimedia platforms serve a public interest mission. They operate on a value-based approach that emphasises free access to knowledge, community-led creation and content moderation, and privacy. As a nonprofit organisation reliant on volunteers, implementing age assurance measures—other than at the request of our own userbase—would contravene our mission and values. Such a requirement would also place an insurmountable burden on the Foundation’s resources. We recognize the importance of addressing the risks outlined in Ofcom’s risk register. We are fully committed to ensure a safe online environment. Fortunately, the Foundation’s unique model and the nature of our content mitigate many of the concerns Ofcom aims to address.

As a nonprofit foundation, we have strong concerns regarding Ofcom’s proposal to require age assurance for “priority content” (PC). It is important to recall that the concept of PC is very broad: it includes, for example, content depicting violence to entirely fictional animals. Ofcom proposes that a wide range of services would have to carry out age assurance for PC, even for 17 year olds. This includes proposal AA4, which applies to platforms deemed “medium” risk for any kind of non-prohibited PC. It is worth noting that “medium” risk is determined by looking at an expansive range of factors, but seemingly being *presumed* when a service 1) has over 100,000 under-18 users, but 2) does not have the resources to muster evidence proving low likelihood of posing risk to under-18’s from such content.<sup>3</sup>

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<sup>3</sup> In the Children’s Risk Assessment Guidance, on pages 35-36, it reads that medium risk will apply *inter alia* where “there is some scope for this kind of content to impact many children,” which is presumed if “[e]vidence indicates that it is likely that your service has between 100,000 and 1 million monthly UK users who are children” and “your service does not prohibit this kind of content\*\* and there are some

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This approach to defining levels of risk extends beyond the basic legislative premise of the OSA, a “duty of care” for platforms that would achieve parity with the offline world. Such an approach may not align with the legislative intent of Section 12(3) of the OSA: had Parliament wished to require age assurance in the scenarios proposed by Ofcom,<sup>4</sup> Parliament would have said so explicitly.<sup>5</sup> Instead, Parliament asked for “protection” against the risks posed by PC. Age assurance is just one of a wide range of ways in which vulnerable users can be protected. Additional approaches include: measures that would reduce *the frequency* of encounters to harmful content; peer support (both online and offline); social safety nets; user/community control; educational materials; neutral/contextualised presentation of the content; and, the ability to engage in discussion of the materials or leave feedback. As age assurance insofar as a mechanism relies on introducing significant friction to the user experience and reducing privacy (i.e., requiring proof of age), it is one of the most privacy-infringing means of protection conceivable, and can be particularly detrimental for collaborative projects like Wikipedia, where volunteers and readers may contribute to or visit webpages on sensitive subjects like sexuality, gender, and medical issues. Age assurance is *one* possible means of complying with a “protect” duty, but does not have to be imposed to the extent proposed in the consultation.

The Child Rights Impact Assessment we commissioned identified risks to children who use the Wikimedia projects. We are working both as an organisation and with our volunteer communities to implement some of the assessment’s most feasible and impactful recommendations to keep children as safe as possible. However, following a holistic evaluation of risks and benefits to children in the unique context of Wikimedia projects, it is important to note that the independent assessment did not recommend any form of age assurance as a mitigation to the risks identified. Furthermore, the assessment found that the most risks are relevant for active

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systems and processes in place to address this harm but you cannot demonstrate they are effective at reducing risks to children.”

<sup>4</sup> As an example, at 15.199, Ofcom concedes that imposition of age assurance in the AA4 scenario would be by regulatory choice (i.e., “we have exercised discretion”), rather than because the law requires it.

<sup>5</sup> On the contrary, the UK Government specifically stated: “We expect that *only services which pose the highest risk to children will use age-verification technologies.*” (The emphasis is ours). Lord Parkinson of Whitley Bay, House of Lords. (25 April, 2023).

<https://hansard.parliament.uk/Lords/2023-04-25/debates/8A42D322-903C-485F-907E-11FDF4EDCB08/OnlineSafetyBill#contribution-8A734565-5C4D-45EE-B977-12F2232BBD1E> (In that same debate, speaking for the Labour frontbench, Lord Stephenson of Balmacara spoke of Parliament striving “to find a way of *ensuring that we do not end up with an age-gated internet*, which I am grateful to find that we are all, I think, agreed about: that is very good to know.”

<https://hansard.parliament.uk/Lords/2023-04-25/debates/8A42D322-903C-485F-907E-11FDF4EDCB08/OnlineSafetyBill#contribution-D3F25372-3DD7-4757-A9BF-85AB352887BC>). (The emphasis is ours).

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contributors (i.e., volunteer editors), rather than for passive readers. Ofcom has identified that certain features that are likely to put children at risk, such as “user communication,” are often much lower on Wikimedia projects compared to other platforms. Ofcom’s current approach casts “user communication” as a catch-all term for direct messaging and private video calling features. On Wikipedia, video calls are not possible, and most user communication is logged in publicly accessible records. The OSA does not leave room for any nuance, meaning that publicly viewable discussions are seen as presenting the same level of risk as private video calls.

While implementing age-assurance methods contravenes the fundamental nature of the Wikimedia platforms, values, and mission, we are fully committed to ensure a safe online environment. We respectfully suggest that Ofcom consider a more flexible and context-sensitive approach to age assurance that exempts educational sites.

### **3. Defining primary priority content (PPC) and suicide-related content on Wikipedia**

***Concern:*** Wikipedia’s educational content is not the cause of the problem that Ofcom is charged with solving, but current guidance incentivises overcompliance at expense of the public interest.

***Recommendation:*** Provide a clear statement within the guidance that neutrally-presented and/or appropriately contextualised educational content is not PPC, PC or NDC. In addition, provide bright-line tests for potentially borderline content to assist platforms seeking to comply with the regulation.

Ofcom’s examples of “primary priority content” (PPC), “priority content” (PC), and “non-designated content” (NDC) are helpful. However, content on Wikipedia and other Wikimedia projects should never be seen as PPC because the content is neutral, academic or educational in nature, and its presentation on the website is not intended to encourage, promote, or normalise the underlying topics (See tables 8.3.1, 8.3.2, and 8.3.3).

Suicide-related content offers a sharp example of the need for clearer alignment between problem and solution. In Ofcom’s definition of PPC, suicide content is only PPC if it “normalises, romanticizes, or glorifies suicide [...] such content can portray suicide as a positive, aspirational, or desirable outcome” (8.17; see also Section 61(4) of the OSA). However, table 8.3.3 indicates that “academic or educational articles” are *not* PPC, but the examples given include only

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“articles related to suicide rates or suicide prevention methods.” The scope of the exemption for academic or educational articles related to suicide raises the question: Are all academic or educational articles related to suicide exempted? Or does the exemption only apply to academic or educational articles “related to suicide rates or suicide prevention methods”? If Ofcom intended the latter, this ignores the reality that there are academic or educational articles not related to suicide rates or suicide prevention that also do not portray suicide as “positive, aspirational, or desirable.”

Wikipedia strives to provide accurate and unbiased information on all encyclopaedic topics, including suicide. This academic approach is also true of articles related to mental health, psychology, and biographies of notable individuals who have died by suicide, as well as those unrelated to suicide epidemiology or prevention such as that about [assisted suicide](#). As an encyclopaedia, Wikipedia entries are designed to provide factual, non-sensational information on self-harm, while also acknowledging its sensitive nature and potential impact on readers. Articles such as [“Self-harm”](#) provide comprehensive information on the subject, including causes, treatments, and cultural representations.

We are concerned about gaps in the rules that create ambiguity as to whether certain types of encyclopaedic content are covered. The absence of bright-line tests in such cases creates challenges for the operators of educational, public interest projects seeking to comply with the regulation.

For example, some Wikimedia projects feature non-pornographic content involving anatomy, nudity, or sexual activity, where the primary purpose is educational and/or artistic. As Ofcom notes, this content is distinctly different from pornography. To ensure further clarity, Ofcom could provide a less narrow set of examples of what is considered “[e]ducational material which includes imagery of, or discussion about, anatomy, nudity or sexual activity”—the draft examples are currently limited to sex education and biomedical illustrations, but make no mention of something like the photographs of lewd murals from the ruins of Pompeii, which illustrate Wikipedia articles about ancient history. A similar observation could be made about the draft examples of “[a]rtwork featuring nudity of sexual activity where the primary purpose is artistic”—here again, historical artwork depicting sexual activity could be explicitly called out as a further example in this category.

Fundamentally, given the length and depth of the guidance overall, and the huge range and number of people that may have reference to it (directly or, for example, through a provider’s educational materials), it would be greatly beneficial for Ofcom to clearly state that

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neutrally-presented and/or appropriately contextualised educational content is not PPC, PC or NDC. This change would disincentivise over-moderation by platforms who are seeking to minimise any risk of penalties. Currently, the risk of over-compliance is elevated by suggestions in various places by Ofcom that content must be treated as some forms of PPC, PC or NDC if it might “inadvertently” and/or “unintentionally” encourage bad behaviour in children.<sup>6</sup> The vagueness and uncertainty that would surround such an assessment is bound to lead to increasing the likelihood of disputes and litigation as well as overcompliance. The more typical test, developed over centuries within common law jurisdictions, is to look either for malicious intent or for serious recklessness.

#### 4. Compliance burdens

**Concern:** Ofcom's extensive regulatory requirements unfairly burden non-commercial, public interest platforms, which are less likely to cause harm compared to commercial platforms.

**Recommendation:** Allow platforms to focus their resources on addressing specific complaints from their users, and only mandate evidence-guided explanations from platforms when there are clear breaches or concerns of actual, substantial harms.

The Child Rights Impact Assessment we commissioned identified limited risks to children on the Wikimedia projects, showing that the projects are designated to provide educational and factual information with robust safeguards against harmful material. Specifically, the projects, which do not include targeted advertising or data monetisation, present significantly lower risks compared to commercial social media platforms. However, Ofcom’s requirement for further evidence gathering and documentation to mitigate a *possible* risk represents a hugely resource-intensive undertaking.

Organisations with business models that incentivise harmful content are best resourced to produce the necessary “evidence” to justify their practices in such a documentation-gathering exercise. Thus, this resource-intensive undertaking unfairly disadvantages non-commercial, public interest platforms that are least likely to produce the harms that Ofcom aims to mitigate.

Policymakers and regulators can sometimes underestimate how time-consuming it can be to comply with any given part of hard law (e.g., the OSA) and soft law (e.g., the Codes of Practice),

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<sup>6</sup> As an example, in Table 8.3.1, Ofcom states: “Unlike illegal suicide content (please refer to the ICJG), suicide content that is harmful to children does not need to encourage intentionally or deliberately.”

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especially for volunteer-run, public interest services that are operating in an increasingly complex international legal environment.

Rather than mandating the sorts of exercise that Ofcom has proposed across a wide range of platforms (with additional demands on platforms that have large userbases, even if that userbase is mostly adult), Ofcom could take a far less onerous approach to regulation. Ofcom's broad supervisory powers can be used to ask for evidence-guided explanations on demand when there are clear breaches or concerns. Ofcom can let platforms be guided by their experience in their risk assessments as well as expectations, requests, and concerns coming from their users. Such an approach would enable platforms to focus on areas where they are receiving complaints rather than on proving negatives. Requiring platforms to prove an *absence* of child users, an *absence* of complaints/risks, or *proof* that the provider's chosen approaches are working is particularly burdensome on organisations with limited resources.<sup>7</sup> Ofcom can exercise its discretion to specifically question organisations where there is actual suspicion of substantial harms to children.

## Conclusion

The Wikimedia Foundation appreciates this opportunity to suggest potential measures that would enable us to work constructively with Ofcom and other stakeholders across the UK to create a safer online environment for all users, including children. We urge Ofcom to consider the points we have made above and take into account the unique nature and operational model of the Wikimedia projects, along with other public interest platforms that benefit people and communities of all ages across the UK. Our purpose and function is fundamentally different from commercial platforms.

## Summary of recommendations:

1. **“Significant Number of” Children:** We respectfully recommend that Ofcom develop the point of “significant number” of child users, considering platforms’ risk level and depth of user engagement rather than focusing solely on user numbers. For educational

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<sup>7</sup> In section 14.59, on page 31 of Volume 5, Ofcom acknowledged that its approach of imposing extra compliance burdens on “large platforms” universally will have unfair consequences for large but low-resource organisations: “We recognise that the size of the UK user base is an imperfect proxy for a service’s capacity, including its resources and capabilities. We have considered supplementing this with additional criteria but we provisionally believe that these additional criteria would still be subject to important limitations, whilst adding additional complexity, so we are not proposing these at this stage.”

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and encyclopaedic platforms like Wikipedia, where risks are inherently lower, this assessment should be more flexible and context-specific.

2. **Context of the Platform Model and Existing Safeguards:** We urge Ofcom to recognise the fundamental differences between platforms driven by advertising revenue and/or profit and those platforms that are nonprofit and/or educational like the Wikimedia projects. Our model, which prioritises free access to knowledge and is supported by individual charitable donations, significantly informs our risk profile. Coupled with our effective community-led safety measures, we believe a tailored and/or specific mention in the regulatory approach is necessary.
3. **Age Assurance:** While we acknowledge the importance of age assurance in high risk platform contexts, we suggest that it should not be a one-size-fits-all solution. We encourage Ofcom to consider alternative, less intrusive methods of protection that allow us to uphold our values of privacy and accessibility.
4. **Defining Primary Priority Content (PPC) and Suicide-Related Content:** We request further clarification on the definitions and scope of exemptions for PPC, especially concerning educational and academic content related to sensitive topics like suicide. Given Wikipedia's neutral and factual presentation of such content, we believe it should not fall under stringent measures intended for more harmful materials.
5. **Compliance Burdens:** We respectfully propose that the documentation and evidence-gathering requirements for low-risk, nonprofit platforms like the Wikimedia projects be reduced. Ofcom could instead mandate evidence-guided explanations when there are clear breaches or concerns, thereby allowing platforms to focus their resources on addressing specific complaints from their users.

Ensuring a safe environment for all users, particularly the healthy development of children, is a top priority for the Wikimedia Foundation and communities as well as all Wikimedia projects. We are dedicated to collaborating with Ofcom to achieve this protection while upholding our core values of free and open access to knowledge. We look forward to ongoing engagement with Ofcom to achieve these goals effectively and to ensure that our collaboration leads to real, positive results.

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