

BBFC response to the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into age-verification for online wagering and online pornography

Executive Summary

The BBFC is the non-governmental, not-for-profit independent regulator of film and video in the UK. In February 2018, the BBFC was designated as the Age-verification Regulator under Part 3 of the Digital Economy Act (DEA). It would have been our responsibility to ensure that commercial pornographic content accessible to UK consumers is placed behind effective age-verification controls in a way that secures that the material is not normally accessible to under 18s.

In October 2019, the UK Government announced that they would not introduce age-verification under the DEA, and instead the child protection aims of the legislation would be met as part of its broader online harms strategy. The circumstances informing the decision are particular to the UK, including EU legislation, and will not impact on efforts to introduce a similar regime in Australia.

Age-verification has not been abandoned in the UK, and is sure to be included in the forthcoming online harms legislation. It remains a vitally important child protection measure, and technologically workable. The need for its urgent introduction is supported by research that demonstrates both the impact of pornographic material on children and broad public support for such an initiative.

The BBFC's engagement with the adult industry has been positive, and we were confident that the largest pornographic companies - who operate hundreds of individual sites, including the most popular in the world - would have complied with the requirements of the legislation, and would do so if Australia adopted similar protections for its children.

There are several viable age-verification solutions ready to be deployed, including innovative methods that are surprisingly light-touch while being necessarily robust. The BBFC has published Guidance setting out the criteria against which we would have assessed compliance with the DEA. All leading age-verification providers had voluntarily submitted to be audited under our Age-verification Certificate scheme, which demands a high standard of privacy to reassure consumers their data is secure and is not passed to pornographic services in the process of verifying age.

While age-verification is not a silver bullet, we firmly believe the UK regime would have been successful in preventing children from stumbling across harmful pornographic content on commercial sites.

Furthermore, age-verification plainly has wider applications online beyond commercial pornographic services, with scope for developments that would allow children to securely share age-attributes (to prove they are over 13, for example) should this be required.

The BBFC fully supports steps for Australia to implement age-verification to protect children online, and would welcome the opportunity to discuss any of the below further.

1. Background to Age-verification for online pornography in the UK

The British Board of Film Classification (BBFC) is the non-governmental, not-for-profit independent regulator of film and video in the UK. In February 2018, the BBFC was designated as the Age-verification Regulator under Part 3 of the Digital Economy Act (DEA) because of our longstanding expertise in pornography and regulation online. The BBFC welcomes this opportunity to respond to the Committee's inquiry, and strongly supports the further application internationally of age-verification controls to better protect children from potentially harmful content online. We would be happy to discuss further and answer any questions raised by our submission.

The proposed role of the Age-verification Regulator was to ensure that commercial pornographic content accessible to UK consumers is placed behind robust age-verification controls in a way that secures that the material is not normally accessible to under 18s. The legislation aimed to protect children from pornographic content online through age-verification and by preventing access to illegal extreme pornographic material, as defined in the Criminal Justice and Immigration Act 2008¹.

In June 2019, the UK Government announced a postponement from the entry into force date of July 15 in the region of six months due to the failure of officials to notify the BBFC's Guidance on Age-verification Arrangements to the European Commission as required by the Technical Standards and Regulations Directive (TSRD). This administrative error delayed what would have been the successful implementation of a vitally important and groundbreaking child protection regime, as the TSRD process necessitated a three month "standstill" period while the Guidance was considered in Europe. This period concluded on 2 October 2019.

The next step towards implementation was for Government to lay the BBFC's Guidance in Parliament and announce a new date for entry into force. However, the Government announced on 16 October 2019 that the child protection aims of the DEA would instead be met as part of its broader online harms strategy.

The BBFC had all systems in place ready to undertake our role, to ensure all commercial pornographic websites accessible from the UK would have age-verification controls in place or face swift enforcement action. The adult industry was similarly prepared to implement age-verification, and age-verification providers were undergoing a robust certification process to ensure they too were ready for entry into force. The Government has acknowledged our preparedness and stated that the BBFC will continue to play a key role in this area. So too will age-verification itself.

¹ Under the Criminal Justice and Immigration Act 2008 an extreme pornographic image is one which is pornographic and grossly offensive, disgusting or otherwise of an obscene character, which features an apparently real person, and which portrays in an explicit and realistic way an act which:

- Threatens a person's life
- Results or is likely to result in serious injury to a person's anus, breasts or genitals
- Involves sexual interference with a human corpse
- Involves bestiality
- Involves rape

The UK Government's decision to not implement age-verification under the DEA was a political decision, based on a desire at Ministerial level for a more "coherent" approach to online harms. The circumstances informing the decision are particular to the current political context in the UK and the wider European regulatory landscape, most notably in relation to the revised Audiovisual Media Services Directive (AVMSD); they will not impact on efforts to introduce a similar regime in Australia.

We will now bring our expertise and work closely with Government on their plans to tackle online harms and better protect children online. The BBFC would welcome the opportunity to share our learnings through our work on the DEA with the House of Representatives Standing Committee on Social Policy and Legal Affairs.

2. Research in support of age-verification

There is a wealth of research in the UK alone supporting the case for intervention to prevent children accessing online pornography. In particular:

- In a survey for Parent Zone in September 2015, nearly two-thirds of parents (63%) thought that the internet meant that children were exposed to sex too early
- 60% of young people were 14 years-old or younger when they first saw pornography online - although 62% said they first saw it when they weren't expecting to, or because they were shown it by someone else (BBC Porn: what's the harm? survey April 2014, conducted by ICM in consultation with Dr Miranda Horvath and Dr Maddy Coy)
- 75% of girls aged 13–21 agree all pornography websites should have age-verification controls (Girls' Attitudes Survey, 2016 Girlguiding)
- Internet Matters published research in May 2019 detailing parents' concerns about their children viewing online pornography, including a distorted view of healthy relationships with 52% of parents thinking that a child may believe online pornography represents typical sex. 47% of parents are concerned about the poor portrayal of women in pornography, including violence and abuse; with 36% thinking this could give an improper education about asking for and getting consent

As part of its role as the Age-verification Regulator, the BBFC has carried out benchmarking research into children's exposure to online pornography. Understanding the experiences of children and how they access and interact with pornography online is fundamental to assessing the impact of the introduction of age-verification to better protect children.

The research included an online survey of 1,142 parents and their children (aged 11-17), and found that:

- 83% of parents agreed with the statement "there should be robust age-verification controls in place to stop children (under 18s) seeing commercial pornography online"
- 56% of 11 to 13 year olds agreed with the statement "I want to be locked out of websites that are for 18-plus year olds"
- Over 60% of 11-13 year olds said their viewing of pornography was mostly "unintentional".
- 41% of young people (aged between 11 and 17) who knew about pornography agreed that watching pornography made people less respectful of the opposite sex. Only 13% disagreed.
- 75% of parents in the survey thought their child hadn't seen pornography online, but in reality 53% of their children reported that they had in fact seen it.

The research also included 36 qualitative interviews lasting 2-3 hours with 16-18 year olds, and four focus groups of parents, each with six participants.

Most children and parents interviewed in the qualitative research believed that age-verification would prevent children from accidentally seeing pornography at a young age, and this in turn would delay the age at which children start to actively watch pornography. Some young people interviewed reported having seen pornography as young as 7 or 8 years old. Most of these children stumbled across pornography unintentionally at first, and it was often these children who

felt they had been most negatively affected by pornography. They described feeling “grossed out” and “confused” when they first saw pornography, particularly those who had seen it when they were under the age of 10. Many had unintentionally stumbled across “aggressive” or “violent” pornography, which they found upsetting or disturbing.

Please see a summary of findings from the research here:

<https://bbfc.co.uk/sites/default/files/attachments/BBFC%20Research%20into%20Children%20and%20Pornography%20260919.pdf>

3. The Digital Economy Act 2017

Under s14(1) of the DEA², all providers of online commercial pornographic material accessible from the UK would have been required to carry age-verification arrangements for UK consumers to ensure that their content is not normally accessible to children. The DEA also gave the BBFC as the Age-verification Regulator powers to act where a service is making extreme pornography available to people in the UK.

If an online commercial pornographic service did not comply with the DEA, the BBFC was designated with a number of enforcement powers. These include requesting ancillary service providers to withdraw services such as advertising, asking payment-services providers to withdraw services, and requiring internet service providers and mobile network operators to block access to the non-compliant service. Though mentioned in the DEA, we were not designated with the power to fine non-compliant services as we did not believe this power would have been effective given the global nature of the adult industry. The powers we were designated with were likely to be much more formidable. For example, a payment-services provider such as VISA or Mastercard withdrawing services from a non-compliant site affect that company on a global level, and both companies had confirmed a willingness to cooperate with the regime. As might requesting a hosting company or advertising network, which we would have considered ancillary service providers, to withdraw services.

The BBFC would have issued preliminary notifications to a non-compliant site before taking any enforcement action against them. After this, we would have been able to choose the most effective course of enforcement action on a case-by-case basis.

All online pornography services operating on a commercial basis, wherever they are based, would have been covered by the law. The government defines what “commercial basis” means in the Online Pornography (Commercial Basis) Regulations³. This includes websites which offer pornographic content for free, but which generate revenue through advertising or premium content. The Regulations excluded social media platforms, where pornography is often accessible, from the scope of the DEA regime on the grounds that pornographic content would not comprise a sufficiently large proportion of the total content on a given platform. However, the regime could have been adjusted to include social media, albeit most likely with alternative enforcement powers since blocking an entire platform would have been disproportionate.

² <https://www.legislation.gov.uk/ukpga/2017/30/section/14>

³ http://www.legislation.gov.uk/uksi/2019/23/pdfs/ukxi_20190023_en.pdf

4. The BBFC's role

As the Age-verification Regulator, the BBFC was to be responsible for making sure that online commercial pornography services carry age-verification controls. We have published Guidance on the kind of age-verification arrangements that would have ensured that these services complied with the law, and would have taken enforcement action against online pornographic services that didn't carry effective age-verification and/or those that contained extreme pornographic material.

We would have been required to act proportionately, and had planned to prioritise the most popular sites. As 70% of UK traffic visit just the top 50 sites - and these sites are owned by an even smaller number of companies - we were confident our efforts would have made a significant impact in a relatively brief period of time. Additionally, we would have investigated sites reported to us by charities, stakeholders and individuals. Investigations would have been undertaken by the BBFC's team of Compliance Officers, who currently classify film and video works, including pornography, for release in the UK in cinemas, on physical formats and for VOD.

Guidance on Age-verification Arrangements

Under s25 of the Digital Economy Act 2017 (DEA), the BBFC was required to publish "guidance about the types of arrangements for making pornographic material available that the regulator will treat as complying with section 14(1)."

Our Guidance on Age-Verification Arrangements sets out the criteria by which the BBFC would have assessed that a person had met the requirements of s14(1) of the DEA. This includes:

- a) an effective control mechanism at the point of registration or access to pornographic content by the end-user which verifies that the user is aged 18 or over at the point of registration or access
- b) use of age-verification data that cannot be reasonably known by another person, without theft or fraudulent use of data or identification documents nor readily obtained or predicted by another person
- c) a requirement that either a user age-verify each visit or access is restricted by controls, manual or electronic, such as, but not limited to, password or personal identification numbers. A consumer must be logged out by default unless they positively opt-in for their log-in information to be remembered
- d) the inclusion of measures which authenticate age-verification data and measures which are effective at preventing use by non-human operators including algorithms

We opted for a principle-based approach rather than specifying a finite number of "approved" solutions, to allow for and encourage technological innovation within the age-verification industry. In the years we worked on the project, we have seen significant advances in this area, notably the development of age estimation technology which had the potential to be both robust and easy to use for consumers.

The BBFC's standards as set out in the Guidance have been adopted by Ofcom, who regulate pornographic content on VOD platforms in the UK. The principle-based approach is also mirrored

in the Home Office's draft guidance to underpin the Offensive Weapons Act, which introduces age-verification for bladed articles and corrosive substances.

The Guidance outlines good practice, such as offering a choice of age-verification solutions to consumers. It includes information about the requirements that age-verification services and online pornography providers must adhere to under data protection legislation, and the role and functions of the Information Commissioner's Office (ICO).

The Guidance also sets out what would have been the BBFC's approach and powers in relation to online commercial pornographic services and considerations in terms of enforcement action.

Please see the Guidance on Age-verification Arrangements here:

<https://www.ageverificationregulator.com/assets/bbfc-guidance-on-age-verification-arrangements-october-2018-v2.pdf>

Guidance on Ancillary Service Providers

Under s25 of the DEA, the BBFC was required to publish "guidance for the purposes of section 21(1) and (5) about the circumstances in which it will treat services provided in the course of a business as enabling or facilitating the making available of pornographic material or extreme pornographic material."

Our Guidance on Ancillary Service Providers includes a non-exhaustive list of classes of ancillary service provider that the BBFC would have considered notifying under section 21 of the DEA, such as social media platforms, search engines and advertising networks.

Please see the Guidance on Ancillary Service Providers here:

https://www.ageverificationregulator.com/assets/bbfc_guidance_on_ancillary_service_providers_october_2018-v2.pdf

Differences in regulation for pornography online and offline

Following the entry into force of the DEA, had it gone ahead as planned, there would have been two standards of content regulation for pornography in the UK. The first relates to the offline standard for physical video works imposed by the BBFC under the Video Recordings Act which refers to a "harm" test and other legislation including the Obscene Publications Acts 1959 and 1964.

The BBFC's Classification Guidelines for R18 "sex works" are very clear and state that, amongst other things, the following content is not acceptable: "material likely to encourage an interest in sexually abusive activity which may include adults role-playing as non-adults; the portrayal of sexual activity which involves lack of consent; the infliction of pain or acts which are likely to cause serious physical harm, whether real or (in a sexual context) simulated; sexual threats, humiliation or abuse which do not form part of a clearly consenting role-playing game".

Under the DEA, the BBFC's online remit would have extended only to extreme pornography under the terms of the Criminal Justice and Immigration Act 2008. This definition of what is

unacceptable content requiring regulatory intervention is obviously far narrower than the offline “harm” test.

The BBFC had also agreed a Memorandum of Understanding with the Internet Watch Foundation (IWF)⁴ to enable the BBFC to report child sexual abuse images and UK hosted non-photographic child sexual abuse images which may have been identified in the course of an investigation of a online commercial pornographic website. However, under the DEA, the BBFC would not have been able to intervene on content that would be deemed unclassifiable on harm grounds under the offline regime, for example so-called “rape” pornography or a focus on violence against, or the degradation of, women.

The BBFC’s [ageverificationregulator.com](https://www.ageverificationregulator.com) website has a “report a website” button which would have enabled the public to report content which they believe meets the extreme pornography definition or if no robust age-verification is present.

⁴ https://www.ageverificationregulator.com/assets/iwf-bbfc-mou-27_06_18.pdf

5. Criticism of age-verification

Criticisms have been made of age-verification by individuals and groups opposed to the DEA regime. The most common are that age-verification represents an infringement on freedom of expression, that users' will be able to circumvent controls, and that requirements to verify age pose a risk to users' data security.

In regard to the first point, age-verification is not about stopping adults viewing legal online pornography. It is about helping protect children from seeing content that isn't appropriate and could be damaging for them. Neither the UK Government nor the BBFC as the Age-verification Regulator would have had any wish to restrict adults' freedom to access any content they want to, so long as it is within the law. Nor would age-verification under the DEA have impacted independent pornography providers, another misconception, as several viable age-verification solutions would have been available free of charge to the merchant. Therefore pornographic websites would have been able to apply the necessary controls without the need to incur additional costs.

In regard to the second, age-verification is not a silver bullet. Nor should it be seen in isolation, but alongside other measures such as education. Of course some determined, tech-savvy teenagers will find ways to access pornography by circumventing controls. However, young children will no longer stumble across pornography on commercial pornographic websites as they currently do.

Finally, privacy has its own regulator in the UK, the ICO, which has the expertise and powers to apply strict data protection standards that pornographic services and age-verification providers must adhere to, including the General Data Protection Regulation (GDPR). The BBFC had agreed a Memorandum of Understanding with the ICO⁵, but we were clear that we would not duplicate their work.

Furthermore, there are ways in which concerned users could have chosen to age-verify without providing any personal data whatsoever. For example, buying an age-verification retail card over the counter in a shop where the verification is face to face, just like buying alcohol or cigarettes. Other age-verification solutions that were available would also have been so light-touch that we do not believe data concerns would have arisen, e.g. via the use of a mobile phone which has adult filters turned off, the verification for which will have previously been carried out by the user's mobile network operators. This is a process all users must go through in the UK in order to access age-restricted content on their mobile phone, which would otherwise be filtered⁶.

As an additional measure, the BBFC developed a voluntary certification scheme for age-verification providers, the Age-verification Certificate.

⁵ https://www.ageverificationregulator.com/assets/ico-bbfc-mou-09_10_18.pdf

⁶ The BBFC works with the UK's mobile networks to set standards for which content should be placed behind adult filters. Read more here: <https://www.bbfc.co.uk/what-classification/mobile-content>

6. The Age-verification Certificate

The Age-verification Certificate (AVC) is a voluntary, non-statutory certification scheme to ensure age-verification providers maintain high standards of privacy and data security.

The AVC Standard was developed by the BBFC and NCC Group in cooperation with industry, with the support of Government, including the National Cyber Security Centre at GCHQ and Chief Scientific Advisors, and in consultation with the ICO. Under the AVC, age-verification providers may choose to be independently audited by NCC, who are experts in cyber security and data protection, and then certified by the BBFC.

The third party audit by NCC includes an assessment of an age-verification provider's compliance with strict privacy and data security requirements. These are tailored specifically to address age-verification for online pornography, for example by ensuring there is no handover of personal data used to verify an individual's age between AV providers and pornographic websites.

Certified providers will carry the BBFC's new "AV" symbol to indicate that rigorous security checks have been met and the provider has a high standard of data protection.

Providers were consulted throughout the development of the Standard, and all saw the value of the AVC in reassuring consumers that the age-verification solutions they choose to use maintain high standards of privacy and data security. Certified providers are published on our website.

Please see the Standard for the AVC here:

<https://www.ageverificationregulator.com/assets/bbfc-age-verification-certificate-standard-april-2019.pdf>

7. Potential for broader application of age-verification to protect children online

As previously discussed, the principle-based approach laid out in the BBFC's Guidance on Age-verification Arrangements allows for technological innovation and there have already been substantial developments in the age-verification sector since the introduction of the DEA. The proposed age-verification regime for commercial pornography has therefore already fostered the development of a thriving digital economy with an ecosystem of companies developing innovation in online safety. When the regime was first proposed age-verification was expensive and could be time consuming. The BBFC has worked closely with age-verification providers to ensure that a range of options are available which meet the requirements of the DEA.

At the same time, in order to ensure that these solutions were not prohibitively expensive, age-verification providers have developed products which have significantly reduced the cost of age-verification. In fact, a number of age-verification providers were planning to offer age-verification free to online commercial pornographic services and most have services which are completely free to consumers. The reason that this is possible is because age-verification services online can drive uptake for services offline which can be monetised such as age-verification for restricted products such as alcohol and cigarettes or entry to nightclubs.

These developments are important because they mean that age-verification is a simple and affordable option for online platforms. This enables a transition to age-verification on accounts to prevent access for children to age inappropriate content. The BBFC believes additional companies will develop further solutions for children to securely share age-attributes (to prove they are over 13, for example) should this be required.

8. Age-verification and social media

Clearly the BBFC believes that age-verification has wider application online beyond commercial pornographic services in the interests of protecting children's rights by safeguarding them from harmful content. While social media platforms, which often feature pornographic content, did not fall into scope of the DEA, the UK Government has stated that they will aim to address this in their forthcoming online harms legislation. As stated above the planned DEA age-verification regime, could have been expanded to cover social media, but the UK Government's preference was to include in the broader online harms strategy.

There are a number of models of age-verification which could be used for social media. Potentially harmful material on social media platforms needs to be addressed but a 'blanket ban' on users aged under 18 is unlikely to be viewed as a satisfactory solution to the problem, either by platforms or by the general public more broadly. Blocking an entire platform is unlikely to be a proportionate response. Perhaps the power to issue fines would be more appropriate.

The BBFC believes there are a number of other proportionate options that could be considered to address pornography on social media and potentially other harmful content, for example images of real violence or "pro-ana" and pro-suicide content. These range from voluntary measures to direct statutory intervention, though different enforcement powers would be required than those set out in the DEA. For example, age-verification could be applied at account level and could be monitored by the platform.

Further, as noted above, 18+ is not the only threshold that could be imposed on social media. Twitter and the majority of other popular social media platforms (Facebook, Instagram, etc.) state that they require users to be at least 13-years-old. However, a 2016 survey by the BBC found that more than three-quarters of children aged 10 to 12 in the UK have social media accounts, despite the notional age limit. In principle existing age-verification solutions could be adapted or new solutions developed to verify users are aged 13 or over at the point of registration.

9. Education

The BBFC believes education in schools is vital in contributing to building children's resilience in dealing with online risks, including age inappropriate content. The BBFC Education Team seeks to promote resilience in UK schools through its education outreach programme. The BBFC has spoken face to face to over 50,000 people in the past five years, more than 75% of whom are under 18.

The BBFC also provides curriculum-based resources for schools and offers a dedicated children's website, cbbfc.co.uk. Through these various platforms, the BBFC explains to children, parents and teachers how to find out about age ratings and make safe viewing choices online. The BBFC works in partnership with organisations such as Childnet to provide parents and children with guidance, including through Safer Internet Day.

The BBFC has developed and piloted with the PSHE Association an accredited PSHE resource designed to promote resilience and making good choices. It includes lesson plans and a teacher pack. The pilot exercise, which involved 11 schools across the UK, resulted in very positive responses. 99% of teachers felt their pupils were engaged with the lessons, 94.5% of teachers reported that their students had made suitable progress, 81% of teachers said the lessons were relevant to their pupils and 90% felt the lessons were suitably challenging.

We do believe that any discussion within primary and secondary schools about pornography, and strong sexual content, should provide children with age appropriate safeguarding messaging to enable them to make informed decisions about safe navigation of relationships both on and offline. The BBFC also believes any discussion of pornography, and strong sexual content, should be supported with clear guidance for teachers on:

- the legality of accessing pornography on and offline
- safe navigation online
- the regulatory measures in place to protect children in this space, and the reasons for it

10. Conclusion

The BBFC supports regulatory initiatives to make the internet a safer place and particularly the focus on the need to protect children from potentially harmful material online. It is our experience, and supported by research, that parents and other caregivers expect and prefer protections offline to be replicated online. Our research and outreach has also demonstrated that children themselves want protections in place online from inappropriate content.

The introduction of age-verification on pornographic websites in the UK is a necessary and important child protection measure. While it is regrettable that the planned DEA age-verification regime will not come into force, this decision related to political concerns particular to the UK and the wider European regulatory landscape. The UK Government has recognised that BBFC had the necessary regulatory policies in place and the powers and regime were technologically workable and effective.

The UK Government remains committed to protecting children online, and their proposals under the forthcoming Online Harms Bill will surely include requirements for age-verification for pornography, as are similarly required by the revised AVMSD coming into force in September 2020. The BBFC will work closely with the Government to ensure the new legislation meets the child protection aims of the DEA, and we would welcome the opportunity to discuss any of the above further with the House of Representatives Standing Committee on Social Policy and Legal Affairs. We fully support any steps for Australia to implement age-verification to protect children online.