



Draft Guidance on Age-verification  
Arrangements and Draft Guidance  
on Ancillary Service Providers  
Consultation Response

October 2018

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# 1. Executive Summary

The British Board of Film Classification was designated as the age-verification regulator under Part 3 of the Digital Economy Act on 21 February 2018. The BBFC launched its consultation on the draft Guidance on Age-verification Arrangements and draft Guidance on Ancillary Service Providers on 26 March 2018. The consultation was available on the BBFC's website and asked for comments on the technical aspects on how the BBFC intends to approach its role and functions as the age-verification regulator. The consultation ran for 4 weeks and closed on 23 April 2018, although late submissions were accepted until 8 May 2018.

There were a total of **624** responses to the consultation. The vast majority of those (**584**) were submitted by individuals, with **40** submitted by organisations. **623** responses were received via email, and one was received by post. Where express consent has been given for their publication, the BBFC has published responses in a separate document. Response summaries from key stakeholders are in part 4 of this document.

Responses from stakeholders such as children's charities, age-verification providers and internet service providers were broadly supportive of the BBFC's approach and age-verification standards. Some responses from these groups asked for clarification to some points. The BBFC has made a number of amendments to the guidance as a result. These are outlined in chapter 2 of this document. Responses to questions raised are covered in chapter 3 of this document.

A significant number of responses, particularly from individuals and campaign groups, raised concerns about the introduction of age-verification, and set out objections to the legislation and regulatory regime in principle. Issues included infringement of freedom of expression, censorship, problematic enforcement powers and an unmanageable scale of operation. The government's consultation on age-verification in 2016 addressed many of these issues of principle. More information about why age-verification has been introduced, and the considerations given to the regulatory framework and enforcement powers can be found in the 2016 consultation response by the Department for Digital Culture Media and Sport<sup>1</sup>.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/534965/20160705\\_AVConsultationResponseFINAL\\_\\_2\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/534965/20160705_AVConsultationResponseFINAL__2_.pdf)

Whilst all responses have been considered by the BBFC, it is important to note that this consultation on draft guidance did not concern the principle of age-verification, which is a matter for the government. Instead, comments were invited about the BBFC's approach, age-verification standards and classes of ancillary service provider.

Following consideration of the responses to the consultation, the BBFC is taking the following next steps:

- Finalise the guidance documents incorporating changes resulting from consideration of responses to the consultation, with a view to submitting final versions to the Secretary of State in May 2018.
- Continue to work with stakeholders including the adult industry, children's charities, age-verification providers, internet service providers, mobile network operators, ancillary service providers and payment-services providers to establish best practice and ensure that age-verification is a success.
- In consultation with the Information Commissioner's Office and with support from DCMS, work with age-verification providers to develop a voluntary, non-statutory third party assessment, of individual age-verification provisions. This will result in a non-statutory certification of an age-verification provider. This will include provisions for data protection, and the results will be reported on the BBFC's website. This will be in addition to the BBFC's statutory assessment of whether commercial pornographic services are complying with section 14(1) of the Act.
- Launch a website with up to date information about the BBFC's role as the age-verification regulator, including appeals documents and memorandums of understanding.
- Develop advice to the public about safe use of age-verification in consultation with law enforcement agencies.
- Produce advice to the adult industry on pre-age-verification content, and content (including audio and text) before entry into force.

There is more detail about these next steps in chapter 2 of this document.

## 2. Next Steps

**1. Continue to work with stakeholders including the adult industry, children’s charities, age-verification providers, internet service providers, mobile network operators, ancillary service providers and payment-services providers to establish best practice and ensure that age-verification is a success.**

Since the BBFC was invited to take on a regulatory role in the government’s proposed age-verification framework in October 2016, we have engaged with numerous stakeholder groups to establish how best to implement age-verification. The BBFC believes that this engagement is fundamental to the success of age-verification, and in the lead up to entry into force, will continue this engagement to ensure that all groups are fully aware of the requirements of the Act and the enforcement framework.

**2. In consultation with the Information Commissioner’s Office and with support from DCMS, work with age-verification providers to develop a voluntary, non-statutory third party assessment, of individual age-verification provisions. This will result in a non-statutory certification of an age-verification provider. This will include provisions for data protection, and the results will be reported on the BBFC’s website. This will be in addition to the BBFC’s statutory assessment of whether commercial pornographic services are complying with section 14(1) of the Act.**

A large number of responses raised concerns about the potential for age-verification related data breaches, and highlighted a “regulatory gap” between the BBFC and the ICO. The BBFC has enforcement powers in relation to compliance with Part 3 of the Digital Economy Act but is not able to enforce data protection legislation. The BBFC is working with age-verification providers, with input from the ICO, to develop a voluntary audit which would include provisions under data protection legislation. The results of this audit would be reported on the BBFC’s website. The BBFC will publish more details about this initiative on the BBFC website in due course.

**3. Launch a website with up to date information about the BBFC’s role as the age-verification regulator, including appeals documents and memorandums of understanding.**

The BBFC is launching a website specific to our role as the age-verification regulator. The website will contain information about age-verification for parents, consumers and industry.

The BBFC will publish appeals documents, memorandums of understanding and guidance on this website and in the interests of transparency, this is where we will report the results of investigations and enforcement action.

#### **4. Develop advice to the public about safe use of age-verification, in consultation with law enforcement agencies.**

A number of responses raised concerns about the potential for phishing scams and fraudulent age-verification websites. The BBFC will work with law enforcement agencies to develop information about safe use of age-verification and their general advice for consumers on online safety.

#### **5. Produce advice to the adult industry on pre-age-verification content, and content (including audio and text) before entry into force.**

A number of responses from the adult industry raised questions about the scope of the legislation and what content may be allowed in front of an age-verification wall. The BBFC will develop supplementary guidance on what may be allowed in front of age-verification and make this available on our website before entry into force.

#### **6. Finalise the guidance documents in line with responses to the consultation.**

Following analysis of the responses to the consultation, The BBFC has made the following changes to the guidance:

- Following a number of respondents raising concerns about pornography on search engine results, the BBFC will incorporate search engine results into our proportionate approach set out at 2.5 of the Guidance on Age-verification Arrangements.
- We have provided clarification on a number of technical points around age-verification standards in chapter 3 of the Guidance on Age-verification Arrangements, including on the use of credit card information as an age-verification method, and restricted access via passwords and log-ins.
- In the Guidance on Ancillary Service Providers, we have provided clarification that an age-verification provider would not be considered an ancillary service provider, and

that in the interests of fair competition, the BBFC will not notify organisations where it is apparent that they have a commercial interest in age-verification solutions.

- In the Guidance on Ancillary Service Providers, we have clarified that the BBFC may request that that ASPs withdraw services or take other appropriate action which would achieve the primary purpose of the Act.
- In light of the responses regarding Chapter 4 which were referred to the ICO, we have provided clarification, in consultation with the ICO, on data protection legislation including the requirements for Data Protection Impact Assessments and jurisdiction.

# 3. Summary of Consultation Responses

## 3.1. Draft Guidance on Age-Verification Arrangements

### 3.1.a Do you agree with the BBFC's Approach as set out in Chapter 2?

Chapter 2 is duplicated across both the draft Guidance on Age-verification Arrangements and the draft Guidance on Ancillary Service Providers. This part will address all comments on the chapter apart from those which concern ancillary service providers. Comments which concern ancillary service providers are addressed at 3.2.a of this document.

Responses from many stakeholder groups including the adult industry and children's charities were generally supportive of the BBFC's approach. They asked for clarification on timeframes for compliance. The BBFC understands the importance of taking swift enforcement action against non-compliant sites. We are also required to take a proportionate approach. Part of this proportionate approach is to issue a preliminary determination of non-compliance (as set out in 2.6 of the Guidance) to a non-compliant pornographic service. In this notification, we will set out a prompt time frame for compliance.

Some responses asked for clarity on whether there was a hierarchy of enforcement action and whether the BBFC would take a tiered approach in a certain order. The BBFC believes that it is clear in the draft Guidance at 2.4, 2.10, 2.11 and 2.12 and the Secretary of State Guidance to the Regulator at 2.4.b that the enforcement powers designated to the BBFC may be exercised on a case-by-case basis and at 2.5 we set out the considerations that we will have when deciding the most effective course of enforcement action.

In relation to the BBFC's approach set out at 2.5 of the Guidance, some responses asked for clarification about how the BBFC will know which sites are most frequently visited by children, and queried the ethical implications of this statement. It should be noted that this approach is prescribed by section 26 of the Digital Economy Act. The BBFC will exercise our targeted approach using data analytics and demographic information from an industry recognised organisation, ComScore<sup>2</sup>. This approach will also be informed by information from Children's

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/541366/AV\\_ConsultationDCMS\\_20160216\\_Final\\_\\_4\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/541366/AV_ConsultationDCMS_20160216_Final__4_.pdf) (page 7)



Charities. The BBFC will accept reports of non-compliant pornographic services from the public and stakeholders via a web-form which will be available on the BBFC's website. A reference to this reporting mechanism has been added to 2.5 of the Guidance.

Some responses asked that the BBFC publish results of any research carried out under s26 of the DEA. As a transparent regulator, the BBFC will publish the results of research carried out on our website.

Responses raised issues with 2.5 of the Guidance, in particular the references to "extreme pornography" and "potentially indecent images of children". Responses said that these issues were for the police to investigate and not part of the BBFC's remit. The BBFC does not have powers in relation to indecent images of children. However we will have a Memorandum of Understanding with the Internet Watch Foundation so that any indecent images of children found in the course of our investigations will be referred to them. This arrangement is prescribed by 2.5 of the Secretary of State Guidance to the Regulator. Further to this, if a non-compliant pornographic service was reported to contain potentially indecent images of children, it would be within the BBFC's remit and child protection objectives of the legislation, to prioritise investigating such a service and report any relevant content to the IWF for further action. The BBFC has been designated with powers in relation to extreme pornography under sections 21 and 23 of the Digital Economy Act. Therefore the approach as outlined at 2.5 is relevant, and within the BBFC's remit.

The BBFC is confident that with the changes outlined in chapter 2 of this document, the approach set out in Chapter 2 of the draft Guidance is in line with the proportionate approach expected of the age-verification regulator. It should be noted that the BBFC will monitor the impact and effectiveness of the regulatory framework and will report our views to the Secretary of State in an annual report, which will also be made available on the BBFC's website.

### **3.1.b Do you agree with the BBFC's Age-verification Standards set out in Chapter 3?**

As envisaged in the Secretary of State's Guidance to the Regulator, this guidance does not provide an exhaustive list of approved age-verification solutions, but sets out the criteria by which the BBFC will assess that a person has met the requirements of section 14(1) of the Act to secure that pornographic material is not normally accessible by those under 18.

Responses from stakeholders such as children’s charities, the adult industry and age-verification providers were generally supportive of the Age-Verification Standards set out in Chapter 3.

Some responses asked that the following should be a requirement:

*3.7 Although not a requirement under section 14(1) the BBFC recommends that age-verification providers adopt good practice in the design and implementation of their solutions.*

*These include solutions that:*

- collect the minimum data required to establish that the user is aged 18 or above*
- include measures to reduce the potential for improper use, in particular by children, of a verified account*
- provide ease of use for end-users*
- include clear information for end-users on data protection*

The BBFC believes that whilst these elements are good practice, and recommended, they go beyond the legal requirement of s14(1) of the DEA to ensure that pornographic material is not normally accessible to children. To enforce standards that go beyond this “not normally accessible” requirement would be outside of our remit as the age-verification regulator under Part 3 of the Digital Economy Act.

Some responses also asked that 3.8 be a requirement: “Although not a requirement under section 14(1) the BBFC recommends that online commercial pornography services offer a choice of age-verification solutions for the end-user.” Whilst the BBFC recognises that choice to consumers is good practice, it is outside of the BBFC’s remit to require choice of solutions in an age-verification arrangement. It is expected, however, that age-verification arrangements will include a choice of solutions for consumers, both because it is good practice and because it is in pornography services commercial interest to be accessible to a large volume of potential consumers.

Some responses were concerned that the age-verification standards applied to an exclusive demographic coverage and that by out ruling data sets such as Electoral Roll, certain demographics would not be able to access adult content once age-verification is in place. The BBFC took the decision to exclude Electoral Roll as an acceptable data set, in isolation, because it requires a name, address and date of birth to age-verify. This information is reasonably known or predicted by children of, for example, their parents or guardians, and is

information that adults know of other adults. Without cross checking this information with other unpredictable data, the requirement for providers of online commercial pornography to ensure that their material is not normally accessible by children would not be met. The BBFC's age-verification standards apply to a wide range of age-verification methods and data. Having engaged with many age-verification providers, we are confident that there will be age-verification methods which do not discriminate against demographic groups.

Some responses raised concerns about age-verification solutions which rely solely on the possession of a credit card, noting that this method may be open to misuse by children, or fraud. Under existing age-verification arrangements, use of credit cards to prove that an individual is aged 18 or over is an acceptable method. As set out at section 3.5 and 3.6 of the Guidance on Age-verification Arrangements, the BBFC believes that the use of a credit card (as opposed to a debit card) is an acceptable means of age-verification. Language at section 3.5.d has been added to clarify that measures must be in place to authenticate any age-verification data. The BBFC will actively monitor the impact and effectiveness of the regulatory framework, including circumvention and misuse, and will review our approach and standards when necessary.

Some responses suggested that the age-verification standards set out in Chapter 3 are left open to circumvention by people aged under 18 and so the child protection objectives fail. The legislation itself acknowledges that there may be some degree of circumvention where it says that content providers must ensure that their material "is not normally accessible" to children. The BBFC is aware that determined older teenagers may find ways around the standards set out in Chapter 3, however we are confident that the introduction of age-verification will provide far more protection to children online than is currently available and will certainly prevent younger children from stumbling across pornographic content unintentionally.

Some responses asked that Chapter 3 of the Guidance on Age-verification Arrangements reference the recently published code of practice PAS 1296. The PAS 1296 is a voluntary specification which the BBFC was not involved in drafting. As the age-verification regulator, the BBFC is required to issue Guidance on Age-verification Arrangements that we believe will be compliant with s14(1). We will be assessing age-verification arrangements against the criteria set out in that guidance. The BBFC does not believe that it is necessary to refer to the PAS 1296 in the Guidance on Age-verification Arrangements. However, the BBFC recognises the value in industry codes of practice and standards such as the PAS 1296, and will continue to engage with stakeholders such as age-verification providers and the adult industry on technological developments and good practice.

Some responses asked for a clearer statement about the persistence of PINs or passwords and whether it is acceptable to maintain valid verifications in cookies. Respondents suggested that to reduce the risk of children being able to access pornography, sites should log users out after sessions and not allow them to store their username and password. The BBFC believes, in keeping with current online log-in best practice, that age-verification systems must log out by default unless consumers positively opt-in for their log in information to be remembered. The BBFC will actively monitor the impact and effectiveness of the regulatory framework, including age-verification standards, and will review our approach and standards when necessary.

Stakeholders raised concerns for the potential of fraudulent sites. The BBFC acknowledges that fraud online is not a new risk, and that consumers should exercise the same caution when age-verifying as they would with any other website which asks for personal details. The BBFC will develop information for consumers on how best to avoid fraudulent age-verification.

Some respondents asked that the BBFC Guidance places a “conflict of interest clause” in the Guidance preventing pornography or advertising-based companies from operating AV tools. Under the legislation, it is the responsibility of pornographic services to ensure that they have effective age-verification arrangements in place, there is no provision that the arrangements must be independent or third party. To make such requirements would be outside of the BBFC’s regulatory remit.

Some responses asked the BBFC to clarify the references to “consumer choice” at 3.4 and 3.8 of the guidance. Although not a requirement under section 14(1), the BBFC recommends that as good practice, online commercial pornography services offer a choice of age-verification methods for the end-user. This means offering various ways to age-verify, (e.g. credit card *and* mobile phone), to ensure maximum demographic reach. It does not mean offering multiple age-verification providers. To provide clarity, the BBFC has included an annex of definitions in the guidance.

Some responses, queried whether age-verification arrangements were required to maintain audit trails. In the interests of data minimisation and data protection, the BBFC does not require age-verification providers to maintain data for the purposes of providing an audit trail in order to meet the requirements of the act.

Some responses from age-verification providers called for an independent, third-party assessment of age-verification arrangements. Some of these asked that this assessment use the PAS 1296. The Digital Economy Act provides no statutory basis for third party assessments of age-verification arrangements. As set out in the BBFC's next steps, in consultation with the Information Commissioner's Office and with support from DCMS, the BBFC will work with age-verification providers to develop a voluntary, non-statutory third party assessment, of individual age-verification provisions. This will result in a non-statutory certification of an age-verification provider. This will include provisions for data protection, and the results will be reported on the BBFC's website. This will be in addition to the BBFC's statutory assessment of whether commercial pornographic services are complying with section 14(1) of the Act.

### 3.1.c Do you have any comments with regards to Chapter 4?

As set out in the consultation, the BBFC referred comments regarding Chapter 4 to the Information Commissioner's Office (ICO), the UK's independent body set up to uphold information rights. The BBFC will not duplicate the role of the ICO. The role of the BBFC is to focus on the ability of arrangements to verify whether someone is 18 or over.

There will be a memorandum of understanding establishing a framework for co-operation and information sharing between the BBFC and the ICO. As set out in section 3.9 and 3.10 of the draft Guidance on Age-verification Arrangements, the BBFC will inform the ICO where concerns arise during the assessment of the age-verification effectiveness that an arrangement does not comply with data protection legislation. The BBFC will inform a commercial pornographic service if it raises concerns about their age-verification arrangements with the ICO.

Chapter 4 of the draft Guidance on Age-verification Arrangements sets out some of the requirements with which age-verification services and online pornography providers must comply under data protection legislation. In light of the responses regarding Chapter 4 which were referred to the ICO, we have provided clarification, in consultation with the ICO, on the following:

- The Digital Economy Act 2017 does not set out data protection law requirements. Instead, the GDPR and future Data Protection Act (the data protection legislation) establish the legal requirements by which organisations must abide when processing personal data. Chapter 4 of the guidance sets out some of the requirements of the data protection legislation and reinforces the GDPR requirements around data minimisation, retention, security and purpose limitation. In line with the requirements of GDPR Article 35(4), ICO guidance on Data Protection Impact Assessments identifies processing activities<sup>3</sup> that would require online age verification services and online pornography providers to undertake such an assessment prior to the commencement of any processing of personal data via an age-verification arrangement. This point has been clarified in the guidance. Any action against organisations failing to comply with the data protection legislation would be undertaken by the ICO in accordance with the ICO's Regulatory Action Plan.

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<sup>3</sup> <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/data-protection-impact-assessments-dpias/when-do-we-need-to-do-a-dpia/>

- Some respondents have raised jurisdictional issues and voiced concerns around the ICO's ability to regulate and enforce against websites or AV service providers based outside the EEA. The GDPR applies to the processing of personal data of data subjects who are in the EU by a controller not established in the EU where the processing activities are related to the offering of goods and services, irrespective of whether payment is required. This has been clarified in the guidance.
- The BBFC and ICO will publicly confirm the information sharing arrangements agreed through the MoU, including clarity on whether an organisation would be informed prior to the BBFC sharing information with the ICO or vice-versa.

## 3.2 Draft Guidance on Ancillary Service Providers

### 3.2.a Do you agree with the BBFC's Approach as set out in Chapter 2?

The points at 3.1.a are applicable here. This part addresses comments regarding the BBFC's Approach in relation to Ancillary Service Providers.

Responses stated that the BBFC's proportionate approach should include a consideration of the impact that a notification might have on an ancillary service provider or an internet service provider. The requirement to take a proportionate approach is prescribed by section 26 of the Digital Economy Act which states that if the regulator thinks fit, it may choose to exercise its powers under sections 19, 21 and 23 principally in relation to persons who, in the age-verification regulator's opinion:

- a) *Make pornographic material or extreme pornographic material available on the internet on a commercial basis to a large number of persons, or a large number of persons under the age of 18, in the United Kingdom; or*
- b) *Generate a large amount of turnover by doing so.*

The BBFC will always exercise its functions in a proportionate way, by for example, engaging with ancillary service providers and internet service providers in the lead up to entry into force to establish notification arrangements. The BBFC will also notify a non-compliant person and encourage them to comply before taking any enforcement action against them. The BBFC will then decide which enforcement powers will be most effective, but cannot commit to considering the impact that a notification would have on an ASP or an ISP.

Responses, particularly from trade bodies that have ancillary service providers in their membership, asked for clarification about how the BBFC will judge which enforcement powers to use in any situation. The BBFC believes that sufficient information is provided at 2.11 in the draft Guidance. The BBFC is committed to the case-by-case approach prescribed to us by 2.4.b of the Secretary of State Guidance to the Regulator.

Responses asked that the BBFC agree notification arrangements with ASPs and consult with any ASP before notification. As outlined at 3.4 of the Guidance on Ancillary Service Providers, the BBFC will seek to inform ancillary service providers that they are being considered under the Digital Economy Act and wherever possible, agree on notification arrangements.



The BBFC have clarified that in a notice under section 21 of the Act, they may request that ASPs withdraw services or take other appropriate action which would achieve the primary purpose of the act.

Responses also asked that the BBFC include in their notifications to ASPs, an assessment of proportionality and why alternative enforcement action was not considered proportionate or effective. Such information is not required by section 21(2) of the DEA, which sets out what information must be included in a notification to an Ancillary Service Provider. The BBFC does not believe that an assessment of proportionality would be appropriate to include in any notifications under Part 3 of the Digital Economy Act. In the interests of transparency, the BBFC will report all enforcement action on our website. We will also be reporting in an annual report to the Secretary of State on the effectiveness of age-verification. Age-verification regulation under the Digital Economy Act is a new regulatory framework. The most effective course of enforcement action in any given case will not be apparent until the law comes into force. Therefore, it is important that the BBFC maintains a case-by-case approach when issuing enforcement action. As outlined at 2.12 of the guidance on Ancillary Service Providers, the BBFC's approach will also be informed by what enforcement action has proven to encourage compliance in previous cases of non-compliance.

Responses raised concerns about the damage to business that the enforcement powers may have, including loss of income to pornographic services, and called for measures to ensure that ancillary services are reinstated upon compliance with the legislation. Measures to this effect are outside of the remit of the BBFC. The Digital Economy Act sets out the legal requirement for providers of online commercial pornography to have age-verification controls in place. The BBFC has a responsibility to use enforcement powers against pornographic services which do not comply with this law. The enforcement powers which the government have designated to the BBFC are intentionally set up to undermine a non-compliant person's business model and profits in order to encourage compliance<sup>4</sup>. The BBFC will notify non-compliant providers at an early stage before taking action against them, in order encourage compliance. The BBFC will only take enforcement action if the non-compliant person fails to comply following this early notice.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/534965/20160705\\_AVConsultationResponseFINAL\\_2\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/534965/20160705_AVConsultationResponseFINAL_2_.pdf) (page 12)

### **3.2.b Do you agree with the classes of Ancillary Service Provider set out in Chapter 3?**

Responses queried the contrast between the list of classes of Ancillary Service Provider set out in chapter 3 with the list of examples of Ancillary Service Provider set out in the Secretary of State's Guidance to the Regulator in paragraph 5.7. Some responses stated that the definition of Ancillary Service Provider is too broad. The BBFC appreciates that the definition at s21 of the Digital Economy Act may apply to a large number of organisations. The Secretary of State Guidance requires the regulator to set out the *classes* of Ancillary Service Provider, rather than an exhaustive list of examples. This approach allows the BBFC to maintain the ability to adapt to changing technology and new types of Ancillary Service Provider that may emerge. As outlined at 3.4 of the Guidance on Ancillary Service Providers, the BBFC will seek to inform ancillary service providers that they are being considered under the Digital Economy Act and wherever possible, agree on notification arrangements. This engagement has already begun.

Stakeholders raised concerns about App stores, and that they are not mentioned specifically at 3.3. App stores are mentioned at 5.7.e in the Secretary of State Guidance as an example of an ASP, and they are in scope. The BBFC took an approach to list "classes" of ASPs rather than examples in our Guidance on Ancillary Service Providers. The BBFC considers that App Stores would be in scope under 3.3.a of the draft Guidance on Ancillary Service Providers as "an online platform on which a non-compliant person has a presence".

Responses asked that Ancillary Service Providers have a right of appeal by an independent body. This is not prescribed by the legislation. ASPs are not legally required to act following notifications under s21. As outlined in 5.11 of the Secretary of State Guidance to the Regulator, The BBFC will consider representations from ancillary service providers where they state they have been incorrectly notified. The BBFC will withdraw notification if an ancillary service provider is able to demonstrate to the BBFC's satisfaction, that a notification is incorrect.

### **Other Comments**

Some responses queried the scope of the legislation, for example whether sex workers or bloggers would be subject to investigation and enforcement by the regulator. Section 14(1) of the Digital Economy Act applies to online commercial pornography. Under section 14(2) of the Digital Economy Act, the Secretary of State may make regulations specifying circumstances

in which material is to be provided on a commercial basis. The Online Pornography (Commercial Basis) Regulations 2018 are currently being drafted by the government and these will instruct the BBFC about which services are in scope of the legislation.

Similar concerns were raised over what type of content is allowed to be displayed in front of an age-verification wall. The BBFC will produce guidance on this issue before the law comes into force.

Some stakeholders raised concerns about different age-verification standards for services covered by AVMS Regulations. The BBFC will work with other relevant regulators to ensure that there is a consistent approach to age-verification on pornographic services in the UK.

## 4. Key Stakeholder Responses

In this section we provide a summary of key stakeholder responses, where express consent has been given to publish. We have published responses in full, where express consent has been given to do so, on our website in a separate document.

### 4.1. Age-verification Industry

**AgeID** raised concerns about non-compliant pornographic services benefitting from issues such as search engine ranking; low levels of traffic and too slow enforcement action by the regulator. However, the organisation stated that "the list of enforcement tools appears to be sound... we hope companies assisting in the enforcement process will act responsibly..."

**AgeID** want to see a "stamp" or "seal of approval" given to providers who are compliant.

**AV Secure** said that they agreed with the BBFC's approach and standards set out in the Guidance on Age-verification Arrangements, however would like to have seen "greater emphasis on age verification methods that minimise risks to privacy of individuals".

**GBG** asked that the BBFC publish a list of AV providers and asked for the BBFC to publish a list of datasets which are acceptable for age-verification arrangements to use. They also asked how social media platforms would be regulated.

**Verime** were generally supportive of the BBFC's approach, and had queries in relation to audit trails. Verime said that a certification scheme for compliant websites would be welcomed.

**Yoti** commended the BBFC's principle-based approach, and stressed the importance of data protection. **Yoti** recommended that the BBFC issues publicly available FAQs and said that they would welcome a robust review of all age-verification systems.

### 4.2. Adult Industry

**Marc Dorcel** stated that they appreciate the proposed approach by the BBFC and that the Guidance needs to stay open to innovation.

**Portland TV** asked that all pornographic services, including adult AVMS, be regulated under a single regulator with the same content standards and a consistent approach to age-verification. They also asked that the PAS 1296 is used as the “fundamental basis for the independent assessment of age verification providers”, and that the BBFC sets out prompt timeframes for compliance.

**FrolicMe** expressed concern that small, independent pornographic services were covered by the legislation. They were also concerned about the availability of age-verification providers.

### **4.3. Children’s Charities**

**Barnardo’s** welcomed the introduction of age-verification under the Digital Economy Act 2017. They said “While we acknowledge that age-verification will not prevent all children and young people accessing pornography, it will go some way to preventing the easy access to pornography and to incidences where younger children stumble onto pornographic websites. It is also recognised that children and young people are able to view pornographic content on social media and websites that are not considered commercial.”

**Childnet** were supportive of the BBFC’s approach and said: “The BBFC approach is encapsulating what we want to see – carry over the same protections that we afford children in the offline world, to protect them from accessing pornography, to the online world. We are certain of the value of taking this step, as research has shown us that online pornography is the top issue that bothers children online, as well as the high proportion of young people who have come across online pornography by accident, so they are exposed to this content rather than access it.”

**The Children’s Commissioner for England** was supportive of the BBFC’s approach and age-verification standards, but raised concerns about the availability of pornographic content on social media platforms and search engines, and stated that “the CCO would expect ASPs to explore and come up with approaches to protect younger users from accessing pornographic content hosted on their sites. In the absence of legislation, it is their responsibility to ensure that they promote healthy and safe spaces for young people online. This is in line with previous reports and statements the CCO has made regarding children’s digital lives and the corporate responsibility of social media companies towards their younger users.”

**Parent Zone** were broadly supportive of the BBFC's approach and stated that they "frequently hear from parents who have been faced with the difficult task of explaining pornography to younger children who have come across it accidentally." However, they raised concerns about pornography still being readily available on other platforms such as social media.

**CHIS** said that age-verification "helps to show children that, as with alcohol, gambling and similar, a serious effort is being made to ensure the laws mean something". The group also said that it would be vitally important for the BBFC to track and discover new sites and Apps, and raised concerns about age-verification solutions which rely solely on the possession of a credit card.

The **NSPCC** supported the BBFC's proportionate approach and age-verification standards and said that the BBFC must conduct robust, regular research with children and professionals to inform our work. They said that the BBFC should try to secure co-operation from social media companies to respond to a notifications. The **NSPCC** expressed concern that the Act does not apply to Social Media platforms. The **NSPCC** agreed with the standards set out in Chapter 3 of the Guidance on Age-verification Arrangements. However the NSPCC raised concerns that some standards such as the requirement of a password or pin, and use of credit card, may mean that children still gain access to pornographic content.

**The PSHE Association** welcomed the introduction of age-verification stating that "Age verification sends a clear message that there is a social consensus that pornography is a product for adult consumers".

**South West Grid For Learning** agreed with the BBFC's approach and age-verification standards but stated that they "foresee the creation of phishing websites that may emulate Age Verification appearance but purpose is simply to collect personal data (if individuals are familiar with sharing personal data to access content."

## **4.4. Trade Bodies and Standards Bodies**

The **Internet Advertising Bureau** asserted that the BBFC's proportionate approach should include whether it is proportionate to expect or rely on action by an Ancillary Service Provider (ASP), and that the BBFC should consider the impact of a notification on an Ancillary Service Provider.

**The British Standards Institute** welcomed the British Board of Film Classification's consultation on age verification and highlighted a recently published code of practice PAS 1296 and outlined how the code of practice could assist the BBFC in its role as the age-verification regulator.

## 4.5. Campaign Groups

**The Open Rights Group** asked that the legislation be re-evaluated and raised particular concerns about risks to consumer privacy and social exclusion. The group raised concerns about the enforcement powers, circumvention and said that social media platforms should not be considered as ancillary service providers. The response also asserted that the BBFC are not resourced to carry out the role of age-verification regulator effectively.

## 4.6. Members of the Public

It is helpful for the BBFC to understand what is important to the public and we are encouraged by the number of responses from individuals. Many of these raised concerns about privacy, and regulatory oversight of privacy, and were encouraged by a campaign by the **Open Rights Group**<sup>5</sup>. The BBFC understands that user privacy is a key consideration in age-verification, and is working with the Information Commissioner's Office, to ensure that age-verification providers and pornographic services are aware of their obligations under data protection legislation.

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<sup>5</sup> <https://www.openrightsgroup.org/blog/2018/bbfc-consultation-response>