

Age Verification in the Digital Economy Bill

Public Bill Committee Evidence from the NSPCC

The NSPCC is the leading children's charity in the UK, specialising in child protection and dedicated to the fight for every childhood.

1. Introduction

- 1.1 We welcome Part 3 of the Bill, which will require all pornographic content provided on a commercial basis to be behind an age-verification wall.
- 1.2 We know pornography is too easily accessible to children. Our recent research¹ shows that 53% of 11-16 year olds have seen explicit material online, nearly all of whom (94%) had seen it by age 14. Often this material is not sought out, but stumbled upon accidentally through, for instance, pop-up advertisements. More than half of young people in our research reported accessing pornography inadvertently.
- 1.3 This easy access to pornography has harmful impacts on children and often leaves them upset and confused. Childline has seen a 60% year on year increase in the number of counselling sessions with children left worried after seeing pornography online. Many of the children who contacted Childline said they felt “ashamed”, “guilty” and “addicted” after viewing porn online.
- 1.4 Our research found that at least three-quarters of those who had seen pornography felt that pornography was a poor model for consent or safe sex. Over half of boys (53%) felt that porn was a realistic depiction of sex and more than a third of 13-14 year olds told us that they wanted to act out the scenes they had viewed.
- 1.5 In the offline world, children are largely protected from pornographic and other harmful content. Children are not able to view films classified by the BBFC as only suitable for people over the age of 18 due to violent or sexual content. Nor are they able to enter licensed sex shops to purchase pornographic or erotic material. These protections are consistent with the UK’s obligations under the UN Convention on the Rights of the Child,² including the right to be protected from harmful material under Article 17.

¹ <https://www.nspcc.org.uk/globalassets/documents/research-reports/mdx-nspcc-occ-pornography-report.pdf>

² <http://unicef.org.uk/UNICEFs-Work/UN-Convention/>

- 1.6 It is clear to us that we must introduce parity of protection for children from this content online, just as in the offline world.
- 1.7 We believe that the Digital Economy Bill requires three amendments to protect children.
- 1.8 The bill does not require **non-commercial sites or services** (such as peer-to-peer services, where some of the most harmful content is hosted) to comply with the age verification requirements. Nor does it grant the regulator any way to **ensure compliance** beyond the imposition of fines, which are unlikely to be respected by sites based outside the UK. Finally, the Bill does not require industry to **ensure that child protection is built-in** to child-accessible internet services.

2 Coverage of non-commercial sites

- 2.1 We believe the scope of the regulator should be clarified and extended to cover all sites and services hosting pornographic material, **whether or not they are operated on a commercial basis**.
- 2.2 While the mainstream sites accessible to children are commercial (primarily free-to-access but supported by advertising), many sites and services hosting pornographic content are not.
 - For example, Usenet newsgroups are Internet bulletin boards which host a variety of discussions and content, and BitTorrent is a distributed peer-to-peer file sharing system. Neither service is revenue generating, but both host considerable amounts of pornographic content, which would not be accessible to children in the offline world.
 - Equally, some primarily commercial services are designed to host non-pornographic content, but allow users to post pornography, without seeking to make money from such pornography specifically. Both Tumblr and Twitter operate on this basis.
- 2.3 We are concerned that in limiting the scope of the regulator to pornography providers *operating on a commercial basis*, the Bill ensures that neither of these types of service will be within its scope. Such services will therefore be free to continue to provide children with access to pornography.
- 2.4 We believe that children should be protected from all pornographic content, whether or not the provider of the content operates commercially.
- 2.5 **A draft amendment (attached to this evidence) deals with this issue by removing the “commercial basis” restriction.**

3 Ensuring Compliance

- 3.1 The Bill provides the regulator with very limited enforcement powers. Where a pornography provider does not prevent access by children it's only real power to serve an enforcement notice or impose a fine of up to £250,000 or 5% of the operator's turnover. This is unlikely to be sufficient to ensure compliance with the legislation and protect all children from online pornography.
- 3.2 We expect that responsible pornography providers will comply with the regime envisaged by the Bill and put robust age-verification systems in place. Indeed, there will be commercial and reputational advantages in early compliance. But the overwhelming majority of pornography providers are based overseas and are less likely to comply.
- 3.3 **We do not believe that enforcement notices and fines will be effective against these providers.** If the sanctions remain limited in this way, overseas pornography providers (which often have limited or no assets in the UK) will be free to ignore the enforcement notices and fines and continue to make pornography available to children.
- 3.4 It is therefore crucial that there is a backstop enforcement power available to the regulator. For a guide as to how such a backstop power may operate, we can look to the Copyright, Designs and Patents Act. Under s97A of that Act, where a website or service has been infringing intellectual property rights (for example by hosting films or music which has been illegally shared) the court is able to grant an injunction requiring internet service providers to block access to the site. This power has been used by the BPI to block 63 sites illegally sharing music and led to a 75% reduction in such piracy.
- 3.5 **We believe that children deserve at least as much protection as intellectual property rights holders.**
- 3.6 We envisage a similar procedure for enforcement of the age-verification requirement. Where a pornography provider has refused to engage with the new regulator and has ignored enforcement notices and fines, the court would be able to require ISPs to block access to the site until it puts in place a robust system which prevents access to its service by children. This would be a backstop power, to be used in extremis where a site or service has consistently failed to meet its obligations to protect children.
- 3.7 The exact mechanism for the blocking will require the ISPs and the Government to work together to develop a robust and effective blocking model, based on that under the

Copyright, Designs and Patents Act. **New Clause 11 (tabled on 13 October) would enable these judicial blocking powers to be put in place once the model has been developed.**

4 Building Child Protection in to online services

- 4.1 The NSPCC is calling for a statutory code of practice to keep children safe online. The Code would set out responsibilities for anyone developing or hosting online content or services to ensure that there is parity of protection for children between the offline and online worlds. The code of practice will establish a set of minimum standards that would apply consistently to social networks, ISPs, mobile telecommunication companies and other communication providers who all provide the space and content where children interact online.
- 4.2 The internet can also expose children to age inappropriate content which can prove harmful to their safety and wellbeing at a critical juncture in their development. Children will be testing relationships, exploring their sexuality, experimenting and pushing boundaries, and asking themselves questions about the person they want to be. The internet is a vital source for satisfying this curiosity.
- 4.3 In the offline world, we build child protection in to spaces that children may access. For example, one of the guiding principles of the British Board of Film Classification is to protect children from potentially harmful or otherwise unsuitable media content. Content is judged across eight categories which include discrimination, nudity, violence and language among others. Certain content such as pro-suicide and pro-anorexia is not classified at all. Equally in youth clubs, organisations like the Scouts and Girlguiding, dance classes, and theatre troupes we require child protection plans to be in place and staff to receive appropriate safeguarding training.
- 4.4 Online, this kind of protection is almost entirely absent. When it is considered, the safety and welfare of children is seen as additional and only brought into consideration well after the initial design and implementation stages. Good examples such as YouTube Kids, while a positive development which offers curated content for under-8s, was developed nearly a decade after the launch of the main service. Other services such as Omegle, a live video chat site, offer no protection for children at all. Children the NSPCC have worked with reported seeing men showing their genitals, with 76% saying in a survey that they had seen harmful content.

- 4.5 We believe that a statutory code of practice, based on the BBFC classification system and the principles of the ICT Coalition for Children Online, would lay out how content should be managed on a service, and ensure that clear and transparent processes were in place to make it easy for both children and parents to report problematic content. It would also set out what providers should do to develop effective safeguarding policies, a process the NSPCC would support. The code would apply consistently to social networks, ISPs, mobile telecommunication companies and other communication providers who all provide the space and content where children interact online.
- 4.6 We envisage that in order to be effective, the development of a code of practice must involve industry, organisations such as the NSPCC and, crucially, the children and families who use online services. And it must be implemented in a staged way, which commands respect and authority. **New Clause 12 (tabled on 13 October) puts in place the code of practice and allows the Government to make it enforceable.**

5 Conclusion

- 5.1 As the Digital Economy Bill progresses, we urge Parliamentarians and others to remember that the internet is a place children go to have fun. We must recognise the richness of children's lives and how they deploy, use and interact with technology as a means of learning, empowerment, self-expression and connecting with others. We must ensure that they must be free to do that without coming into contact with adult-only, harmful, or upsetting content.

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Draft Amendment on “commercial basis”

Part 3, Clause 15, page 17, line 38 leave out “on a commercial basis”.

Part 3, Clause 15, page 18, line 1 leave out subsection 2.

Part 3, Clause 15, page 18, line 10 leave out subsection 3(b) and subsection 3(c).

Part 3, Clause 19(3), page 20, line 37, leave out “on a commercial basis”.

Member’s Explanatory Statement

This amendment would extend the scope of the regulator, to cover all circumstances in which pornography is made available on the internet, rather than simply on a commercial basis. This would include where pornographic content is provided through peer-to-peer networks, social networking sites, and mobile apps.

While some of these sites may already be covered by the “ancillary providers” protection, this amendment ensures that where they host pornographic content, they will be caught by the main requirements.