

Here is my response to the BBFC's consultation on age verification. This is still in a draft form, but includes what I feel are the most important points to be considered in response to the published guidelines. Please do use this to inform yourself, inform others and to help guide your own responses, which I would urge you to write! I will also be retweeting as much as I can over the next few days in terms of other responses and guidance which people have generously chosen to create and share. You can find these @wordswithrosie.

Please note: I have done everything I can to make sure that what I've written in here is legally accurate, but as long as this message still stands, I am waiting for a response from someone higher up than me to confirm that it's correct.

To whom it may concern,

Please find below my response to the BBFC's consultation regarding the age verification requirements of the Digital Economy Act 2017. My concerns relate particularly to the poor justification of the Act, the lack of safeguards to ensure consumer privacy and the lack of balance between considered stakeholders within the law and the arrangement as it currently stands. I shall further detail these below in addressing the questions put forward by the BBFC for response.

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

- The guidelines in chapter 2 seem to highlight the infeasibility of what the Act is setting out to achieve. While 2.1 notes that the guidelines apply to all providers of online pornography making content available within the UK - a Sisyphean task for hundreds of people, let alone the one or two the BBFC has suggested they will employ for this - they then seem to suggest a selective approach as to which sites they will then pursue if found to be in breach. There does not seem to be a proportionate balance between the feasibility, necessity and impact that age verification will have on all stakeholders within the legislation.
- The reason behind the guidelines, as reiterated throughout the document, is the "protection of children". However, this is still a poorly-supported area through academic research, with no concrete evidence to suggest that young people are harmed by viewing sexually explicit material (Tsaliki, 2011; Albury, 2014; Smith, Barker and Attwood, 2014). Age verification seems to be merely an ineffective, unsubstantiated patch-up for a much wider social issue with regards to how we inform young people about sex and our wider sexual culture—including pornography. Young people are desperate for accurate, inclusive, informed sex education, which produces greater positive outcomes for their sexual, emotional and relationship wellbeing (Forrest and Kanabus, 2009; Coram, 2017). Focusing on age verification serves to mask that problem rather than confront it, and may instead be detrimental to the development of sexual knowledge if not supported by compulsory and comprehensive sex education. This would be a much more effective use of government resources.
- 2.4 refers to "the most effective course of action", but this is unclear as to whether it will balance the interests of all stakeholders, particularly given the rationale behind the Act and the lack of evidence to support this. Major concerns have already been raised by content producers – not just pornography creators, but also sex educators, sex bloggers and other sex workers – as to how age verification will impact businesses and working conditions, from a loss of income to company closure to being forced to work in less safe ways. The BBFC must ensure that their approach does not endanger all stakeholders, and that it mitigates as far as possible the other effects the regulation may involve.

- 2.5 refers to “sites most frequently visited...by children”, but it is unclear how these would be determined. To research this would have significant financial and ethical implications, and without supporting evidence, this statement is meaningless.
- 2.5 refers to “potentially indecent images of children”, but these are covered under the Protection of Children Act (1978) and Criminal Justice Act (1988). While there is a clear need to tackle the presence of images of child sexual exploitation online, it is misleading to conflate these with consensual adult pornography. Such websites should be investigated by the police, not the BBFC.
- 2.8 notes the opportunity for the person or people concerned to make representations to the BBFC. However, these representations must then be taken into account in the decision made. The BBFC must be able to justify the recommended action based on proportionality and balance, taking into account the interests and safety of all stakeholders.
- 2.9 discusses the infraction of “making extreme pornographic material available on the internet to persons in the UK”. This is an offence seemingly already covered by Criminal Justice and Immigration Act (2008) and the Obscene Publications Act (1959). This is outside of the remit of age verification and suggests a further will to police sexual freedom beyond the notion of protecting young people.
- 2.9 and 2.10 both reference the power the BBFC has to give notice to ancillary service providers and internet service providers when non-compliance on a particular site is noted. This implies that the expectation of such an action would be for ancillary service providers or internet service providers to withdraw that site, but this requires additional labour on the part of each of these providers which may be potentially detrimental to their own businesses.
- 2.13 notes the withdrawal of enforcement notices upon compliance with the guidelines. This must be made clear at the first notice to ancillary service providers and to the service itself, and it must be ensured that ancillary services are reinstated upon compliance.
- 2.16 notes that the BBFC will publish details of actions taken and appeal outcomes on their website. While this is appreciated as a move towards transparency, there must be a balance drawn to protect the privacy and business interests of services involved. The details of what information will be published and how long this information would be available for must be decided upon and clearly specified before these guidelines can be accepted, with particular care needed to ensure privacy and data protection.

Do you agree with the BBFC's Age-verification Standards set out in Chapter 3?

- 3.2 lists a number of ways in which age verification can be carried out using documents. However, these documents may not necessarily be accessible for everyone, whether this be through financial difficulties, disability or citizenship. A method of making sure age verification can be achieved by any eligible party regardless of these is necessary to prevent people from being shut out from material they wish to access and further perpetuating social and sexual inequalities.
- 3.4 encourages “the use of mechanisms which confirm age but not identity”, which is contrary to the methods listed in 3.2, all of which can be tied to a person's personal information. Greater clarification on what these methods would be and what they would involve would be beneficial. Furthermore, there is still the option for people to use methods which do link their age to their identity, such as MindGeek's AgeID, creating the need for major considerations for how this data may be used, protected and kept private.
- MindGeek's AgeID solution provides yet another point of contention that the guidelines must recognise. Many consumers will likely use this solution due to the popularity of the tube sites MindGeek hosts, which creates a system of regulatory capture whereby smaller producers are further disadvantaged by the regulations and even more at risk of major financial and

personal consequence. Additionally, MindGeek's main source of revenue is through advertising, and therefore such a company would have significant interest in storing and using individual user data for profit. We have recently seen this happen with Cambridge Analytica, highlighting the pressing need for transparency on how data is used and protection of those whose data is stored. Coupled with a poor standing history of data protection, the involvement of MindGeek in particular presents significant dangers to both producer and consumer stakeholders, and therefore regulations on the storage and usage of personal data are vital to ensure that it is not misused.

- 3.7 and 3.8 use the word "recommends". This makes both of these clauses non-binding and cannot guarantee protection for age verification users. This is a recurring theme throughout the document and is a source of serious concern. There is no obligation for age verification providers to ensure any greater level of protection to their users than that specified within the General Data Protection Regulations, which are wholly inadequate for such a sensitive, personal and private matter such as one's sexuality.
- 3.9 fails to include the necessity to ensure adequate protection against breaches of privacy, which would also surely be a concern regarding an age verification system. We have already witnessed the impact of a data breach concerning sexual behaviours with Ashley Madison, which led to multiple reported suicides, and this cannot be repeated. It is imperative that age verification providers are assessed regarding their data security measures and practices to avoid future leaks or hacks which may compromise this information.

Do you have any comments with regards to Chapter 4?

- 4.3 uses the word "should" with regards to data protection and compliance with the IOC guidelines. This is once-again non-binding, which is a major point of concern for those submitting information potentially as personal as their pornography viewing habits. Furthermore, this creates a regulatory gap between where the privacy concerns of the BBFC end and the ICO guidelines begin which must be filled with new, robust regulations that age verification tools are required to comply with.

In conclusion, while the guidelines from the BBFC present a positive attempt at transparency, they are still overshadowed by major fundamental concerns which have existed since the inception of the Digital Economy Act. The rationale behind the Act is poorly-justified and unsupported by research; there are significant concerns for the livelihoods of pornography producers and for wider sexual freedom; there is a cavernous gap in the safeguarding requirements regarding consumer data protection and privacy; and that age verification requirements will cause greater harm than good for all parties involved - producers, consumers, service providers, regulators and young people.

Yours faithfully,

Rosie Hodsdon
PhD Candidate (Law)
Associate Lecturer
Northumbria University School of Law