

## Written evidence from the British Board of Film Classification (BBFC) [PVW0001]

### About the BBFC

The British Board of Film Classification (BBFC) is the not-for-profit independent statutory regulator of film and video in the UK. The BBFC is also the independent regulator, on a voluntary, best-practice basis, of internet and commercial content delivered via the UK's four mobile networks.

The BBFC is a recognised expert in online pornography. We have regulated adult content released to physical media formats since the mid-1980s, under the Video Recordings Act 1984, and we classify some online content on a best-practice, voluntary basis for a small number of adult services.

In 2018, the BBFC was designated as the Age-verification Regulator under Part 3 of the Digital Economy Act 2017 (DEA), which would have required all providers of commercial pornographic material to put measures in place to prevent children accessing their content. In October 2019, the Government announced that it would not commence Part 3 of the DEA, but instead would introduce age-verification for online pornography through its broader Online Safety Bill.

The BBFC strongly supports the child protection aims of the draft Online Safety Bill, and all efforts to make the internet a safer place for children and for users generally. We welcome this opportunity to submit written evidence for consideration by the Women & Equalities Committee, and would be available to give further evidence and answer any questions raised by our submission.

### **1. The BBFC has indicated that, under the Digital Economy Act, it would have taken a proactive approach to the regulation of online porn. Does the BBFC consider Ofcom to be capable of taking such an approach, given the scale of online porn and the additional regulatory responsibilities being taken on by Ofcom?**

As Age-verification Regulator under the DEA, the BBFC believed that the best way to achieve the legislation's child protection aims was to maximise voluntary compliance from the adult industry. In our view, this is still the case.

From our engagement with the adult industry, it has always been very clear that a proactive approach involving active investigations and the threat of swift enforcement is essential to ensure that compliant sites are not commercially disadvantaged by their non-compliant competitors. Without this deterrent, there is a risk that the regulation creates a commercial incentive for unscrupulous sites to be non-compliant so they can benefit from traffic diverting to them from those that have put age-verification in place. Such a scenario has obvious implications for child protection and indeed to the effectiveness of the entire regime.

All the big adult companies will have contingency plans to avoid regulation if they see their commercial interests being damaged, so it is vital that non-compliance is rapidly identified through proactive investigations and that enforcement processes are not slow or cumbersome.

Under the DEA, the BBFC developed systems, workflows and processes for the proactive investigation of pornographic websites by BBFC Compliance Officers, who currently classify film and video works, including pornography, for release in the UK in cinemas, on physical formats and on VOD.

Pornographic sites would have been actively investigated on a daily basis to confirm that age-verification was in place, that the measures were robust and met the requirements set out in our guidance, and that the site did not contain extreme pornographic content. We would have prioritised the most popular sites based on data supplied by the analytics company Comscore. As the majority of traffic goes to the most popular sites, and these sites are owned by an even smaller number of companies, we were confident that our efforts would have made a significant impact in a relatively brief period of time. There were processes in place for sites to be periodically re-investigated, to ensure continuous compliance, and for traffic to be monitored to enable a swift response to any changes in sites' popularity. Additionally, we would have investigated sites ranked highly in search engine results, and those reported to us by charities, stakeholders and members of the public.

We were very confident of securing a high degree of compliance under the DEA (upwards of 80% from day one) based on the adult industry being confident that we would be actively monitoring their compliance and that any breaches would lead to swift enforcement. We were designated robust powers that we could deploy very rapidly (within days, not weeks) if necessary. We recognised that issuing fines would likely prove very challenging, as the ownership of pornographic services is often deliberately obscure. Then and now, business disruption measures such as instructing internet service providers to block access to a non-compliant site or requesting that payment-service providers withdraw services from non-compliant sites are likely to be more effective.

Consideration needs to be given as to whether the current requirement that Ofcom obtain a court order before using its business disruption powers could limit the speed of enforcement, and the impact this may have on voluntary compliance by the adult industry. There was no requirement for the Age-verification Regulator to obtain a court order before enforcing under the DEA. It is important that Ofcom is designated with the same or equivalent suite of powers, which can be deployed swiftly if necessary, to ensure the age-verification regime under the Online Safety Bill is effective.

## **2. Would the BBFC be in favour of being named in the Online Safety Bill as a body that supported Ofcom in regulating pornography online, particularly with respect to the category of "legal but harmful content accessed by adults"?**

The BBFC has an excellent relationship with Ofcom, and we are keen to support their regulation under the Online Safety Bill in whatever way we can.

In the offline world, pornographic content that may be harmful to adults is regulated effectively under the Video Recordings Act 1984. The BBFC will refuse to classify the following:

- material which is in breach of the criminal law, including material judged to be obscene under the current interpretation of the Obscene Publications Act 1959
- material (including dialogue) 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 real or apparent lack of consent. Any form of physical restraint which prevents participants from indicating a withdrawal of consent
- the infliction of pain or acts which are likely to cause serious physical harm, whether real or (in a sexual context) simulated. Some allowance may be made for non-abusive, consensual activity
- penetration by any object likely to cause physical harm
- sexual threats, humiliation or abuse which do not form part of a clearly consenting role-playing game

Such content can normalise dangerous acts and attitudes leading to real-world harm, as highlighted in the [Home Office's strategy for tackling violence against women and girls](#), published on 21 July 2021:

*The Call for Evidence showed a widespread consensus about the harmful role of violent pornography can play in violence against women and girls, with most respondents to the open public surveys and many respondents to the nationally representative survey agreeing that an increase in violent pornography has led to more people being asked to agree to violent sex acts (54% nationally representative, 79% Phase 1, 78% Phase 2), and to more people being sexually assaulted (50% nationally representative, 70% Phase 1, 71% Phase 2).*

While it is a criminal offence in the UK to supply a video recording that has been refused classification by the BBFC, such content is widely available online. We would welcome the opportunity to work alongside Ofcom to more closely align online and offline content standards, to ensure that adults are better protected from harmful pornographic content. [Barnardo's has published research](#) showing 70% of UK adults (and 75% of parents) agree that content which is unacceptable offline should be unacceptable online.

Furthermore, with reference to question 1, we would be happy to support Ofcom in any investigations that are required into adult sites' compliance with the regulation.

**3. The Government has indicated that pornography will be classed as "priority content" regarding children. This would obligate user-to-user services likely to be accessed by children and where porn is easily accessed, like Twitter, to protect children in age groups judged to be at risk of harm from encountering it, for example through age assurance mechanisms. What kind of age assurance mechanisms would the BBFC recommend Ofcom should require of such services?**

While it is for Ofcom to set out how services must meet their new obligations, it is the BBFC's view that only the most robust forms of age assurance (i.e. full age-verification) are appropriate in relation to online pornography, given the potential harm risk to children. This applies to services like Twitter just as it would to a dedicated pornography service such as Pornhub: if the content is pornographic, the level of age assurance must be suitably robust to ensure that children are protected, regardless of the nature of the service.

As the Age-verification Regulator, the BBFC published guidance on the kind of age-verification arrangements that would have ensured that pornographic services complied with the requirements of the DEA Part 3. The guidance, which was approved by Parliament, sets out the criteria by which the BBFC would have assessed whether a service had met its obligations, as follows:

- 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
- 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
- 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 login information to be remembered
- 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 principles-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 saw substantial developments in the sector, notably the development of age estimation technology, which had the potential to be both robust and easy for consumers to use.

The BBFC has always recognised that age-verification is not a silver bullet; it will not necessarily stop tech-savvy, older teenagers who are determined to find ways around it. However, it will be highly effective in preventing children stumbling across online pornography as they currently do. This in turn would delay the age at which children start to actively watch pornography. In research commissioned by the BBFC, published in 2020, over 60% of 11-13 year olds said their viewing of pornography was mostly unintentional.

Regarding VPNs, we believe that knowledge amongst children, particularly younger children, is far lower than has been reported. In our research, 33% of 16-17 year olds said they know how to use a potential workaround, while just 14% of children aged 11-13 reported the same. Furthermore, we have been told that it is technically possible for adult sites to apply age-verification to any VPN traffic they receive or to block access via VPNs entirely.

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