



Age Verification Providers Association

Rt. Hon. Nadine Dorries MP
Secretary of State for Digital, Culture, Media and Sport
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9 March 2022

Dear Secretary of State,

Online Safety Bill: Meeting expectations on age verification for online pornography

We hope you are well, and would like to strongly endorse the action you and your department are taking in support of Ukraine – a country with whose people we work closely, given their notable contribution to the global digital economy.

Please thank your officials for their reply 23 February in response to our letter of 7 February 2022.

We were surprised and disappointed to find that their letter was somewhat inconsistent with the very welcome tone of announcement of 8 February, which stated:

“The new standalone provision ministers are adding to the proposed legislation will require providers who publish or place pornographic content on their services to prevent children from accessing that content.”

This finally felt like the Government had heard the overwhelming message from MPs, Lords, charities, campaigners for the safety of women and girls, the churches and many others in the growing and well-organised “AV coalition” that agree with the Children’s Commissioner that age verification for online pornography is long overdue.

Instead, your Ministerial Support Team’s reply, unexpectedly, argued that:

“setting priority harms in secondary legislation, rather than in the bill, will mean that they can be kept under review and updated to reflect emerging harms without requiring any changes to primary legislation.”

So it would appear from this that the ‘standalone measure’ is not to be added ‘to the proposed legislation’, but may be left to the further, and likely lengthy, process that will determine what should constitute Priority and Primary Priority Content. Is that actually correct? This requires Ofcom to undertake research, compile risk assessments, put forward draft schedules for your review, Parliament to then approve those before Ofcom can develop codes of conduct and move towards the start of an enforcement process. Just a couple of these steps took over two years for just 20 websites covered by the Audio Visual Media Services Directive.

Your officials add:

“This will also allow for parliamentary oversight and democratic debate about the harms to be included in the list.”

This curiously suggests that provisions in the primary legislation will be subject to less Parliamentary scrutiny than those provided for in secondary legislation. As I know from the time when my PRU team served you and your colleagues in the House, that is not really an accurate reflection of the

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parliamentary process. Indeed the line-by-line scrutiny of Bills in both Houses and by their respective committees is arguably more rigorous than the time devoted to approving most secondary legislation.

“This approach balances the need to give certainty to businesses on the harms they must address, whilst ensuring the legislation remains agile and flexible to emerging harms and risks.”

Does this really mean the Government is keen to retain the ability to remove pornography from the list of harms in future? It is hard to envisage, given its proven connection with violent, sexual crime, when pornography would be considered harmless and merit removal from the objectives of the Bill. Given the new legislation aims to repeal Part 3 of the Digital Economy Act, we expect Parliament to look for a specific provision that replaces this, and it is doubtful that the possibility pornography will be included in a future schedule will stand up to scrutiny.

“The government is working closely with Ofcom to ensure that online services’ new duties come into force as soon as possible following the short implementation period that will be necessary after the bill’s passage.”

We were sadly badly bitten by assurances such as these from the May administration in relation to the Digital Economy Act. Even on the day your predecessors announced they were abandoning Part 3 entirely, the then Minister, Matt Warman MP, pledged action to address pornography would proceed at a faster pace than the wider regime. We will be arguing strongly on the basis of this evidence to establish deadlines in the primary legislation to ensure that any implementation period is indeed “short” – and to define short as 3-6 months.

And finally, the ‘line-to-take’ offered on the enforcement powers simply does not stand up in the context of the global pornographic industry. It is, we are sad to warn you, naïve. There are over a million adult sites, and the vast majority will resist age verification until they are blocked from access and funding. A regime that requires individual court orders will be a paper tiger and make Ofcom, and by association HM Government, look impotent.

We do hope some of these points are misunderstandings, perhaps based on outdated positions that were superseded by your welcome announcement on this issue last month. It would be very helpful to clarify these points before the Bill is introduced so we do not, in turn, provide inaccurate briefing ourselves.

Yours sincerely,

Iain Corby

Executive Director

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Cc: Baroness Kidron
John Carr OBE