

Caroline Keville
Coimisiún na Meán,
One Shelbourne Building,
Shelbourne Road,
Dublin 4.
By email: vspsregulation@cnam.ie

31st January 2024

Dear Ms Keville,

Response to Consultation on the Online Safety Code

The Age Verification Providers Association is the global trade body representing 25 suppliers of age estimation and age verification technology.

Please see below our responses to a number of questions posed by the above consultation where we have relevant expertise.

1. Do you have any comments on sections 1 - 9 of the draft Code?

Para 4.18 on **practicability** may give smaller VSPs the impression that they are excused from compliance if the cost of implementation of measure required by the Code is too high. This arises from a contradiction or ambiguity in the Directive itself. The Commission should be clearer that protections must be proportionate to the risk of harm as well as the cost, and that it is unlikely that for the most harmful content, it would be possible to argue that protections should not be implemented on economic grounds alone.

5. Do you have any comments on any other definitions provided in the draft Code?

There is no definition of “age verification” (or the related terms “age assurance” and “age estimation”).

We note that the Commission refers to “age verification” throughout the document, rather than the broader term of age assurance which is defined by emerging international standards such as ISO 27566 as to include both age verification and age estimation techniques. This means that Irish guidance would use language inconsistent with those standards and the language used by the United Kingdom.

6. What is your view on the obligations in the draft Code that relate to what a VSPS provider must include in its terms and conditions?

11.5 requires VSPs to include in their terms and conditions a requirement that users comply with and do not attempt to circumvent, in particular, the measures relating to robust age verification. It would helpfully also state that VSP service providers should not make available or promote mechanisms that can assist users in circumventing age verification such as Virtual Private Networks and other location-spoofing tools. If it does

this, the guidance should also remind service providers that the use of such tools by child users does not negate the obligation to protect them.

11.6.3 implicitly downgrades the requirement for age verification from “robust” to “effective”. This creates a loophole for services where the principal purpose is other than publishing pornography that would allow for a lower level of age assurance. For example, “X” publishes a large quantity of pornographic content but this is not its principal purpose nor that of a dissociable section of the X service. So underage users could access equally harmful pornography more easily on X than on dedicated adult sites. Adult sites may also respond to the loophole by adapting to make something other than pornography ostensibly their principal purpose e.g. the publishing of cartoons – and if this is achieved in a dissociable manner, then the lower level of “effective” age verification would be acceptable.

“Effective” and “Robust” age verification requires definition.

9. What is your view on the requirements in the draft Code in relation to age verification?

We note that the Commission refers to “age verification” throughout the document, rather than the broader term of age assurance which is defined by emerging international standards such as ISO 27566 as to include both age verification and age estimation techniques. This means that Irish guidance would use language inconsistent with those standards and the language used by the United Kingdom.

We agree that the Coimisiún na Meán should refer to the effectiveness of age verification, rather than specify the particular techniques that must be used. To specify particular techniques would be to stifle innovation.

We agree that VSPs should be transparent about the age verification techniques they use.

At 11.18, requiring VSPs to declare their targets for the proportion of children of different ages who are incorrectly assessed to be adults is an important first step, but the Commission should go further and define the minimum rate of false positives it would accept to still consider that children cannot normally access in appropriate content. Without this, there is a risk of a race to the bottom, with sites which wish to retain as many users as possible and give those users that maximum possible access to content which is what for many drives their business models, selecting the least effective forms of age assurance.

We agree that mere self-declaration of age should not be regarded as an effective age verification technique.

At 11.20 there is an implication that age estimation is not sufficient to provide robust age verification for pornographic sites. While it may not be sufficient for adults only just over 18, for those above a “buffer age” such as 25, facial age estimation can deliver >99.5% certainty that users are at least 18, which compares well to age verification methods. Facial age estimation is often preferred by users when offered a choice, as they do not have to disclose other personal data. It also does not suffer from the same risks arising in conventional age verification from binding the user to the proof, as the user is the proof. **The guidance should be amended to allow for the use of age estimation for pornographic services provided it is still as robust as age verification alternatives through the application of a sufficient buffer.**

25. Do you have any comments on this draft Guidance, including in relation to the matters required to be considered by the Commission at section 139ZA of the Act? Consultation on the application of the Code to the category of video-sharing platform services

On the guidance on age verification:

We welcome the statement that “Effective age estimation should meet any industry standards adopted and report on quality parameters achieved as well as complying with data protection and privacy requirements.”

The Commission could usefully reference international standards such as BSI PAS 1296:2018 or new standards which are almost complete IEEE 2089.1 and ISO 27566, as a way to assess whether a method of age assurance is sufficiently robust or effective. These standards define levels of age assurance (“Indicators of confidence”) to which the Commission can simply refer for the main use-cases. Robust age verification may equate to the “Enhanced” level; effective age verification may equate to the “Standard” level as defined in Part 2 of the ISO 27566 and Appendix A of IEEE P2089.1 (these are consistent).

“Targets for effectiveness would have to be sufficiently high and effectiveness would need to be demonstrated to have been achieved.” – this provides no insight into the Commission’s view as to what would constitute “sufficiently high”.

“Tokenised age services may be considered.” This is welcome but may not be clear to most readers. It might be better phrased as “Mechanisms such as tokenisation” that facilitate the re-use and interoperation of existing age checks may be considered.”

Thank you for the opportunity to contribute to this consultation. Please do not hesitate to contact us for more information.

Yours sincerely,

Iain M. Corby

Iain M. Corby
Executive Director