



Age Verification Providers Association

Chair and Members
Public Bill Committee (Online Safety Bill)
House of Commons,
London, SW1A 0AA
scrutiny@parliament.uk

19 May 2022

Dear Chair and Members of the Committee

Response to call for evidence Online Safety Bill

Thank you for the opportunity to contribute to your call for evidence to inform the Committee's detailed consideration of the Online Safety Bill.

The *Age Verification Providers Association* is a global trade body which represents 25 of the main technology suppliers who have invested in the development of age assurance solutions to support the implementation of age restrictions online. The UK has led the way in developing age verification, innovative age estimation solutions, and international industry standards. **Our members already perform millions of accurate, privacy-preserving, independent and standards-based online age checks every year.**

Summary of our submission

"On the Internet, nobody knows you're a dog"

Any legislation seeking to treat children differently from adults online requires an effective age assurance mechanism to ensure services know which of their users are minors. So, proportionate age assurance is a critical foundation for the Online Safety Bill.

- The Bill should regulate to promote a privacy-protecting, standards-based, open, competitive, interoperable, audited and certified age verification sector as a foundation for a safer internet for children
- Parliament should add a 6-month statutory time limit for the commencement of age verification measures to avoid the risk of 2-3 years delay while Codes of Conduct and guidance are perfected by Ofcom and the Secretary of State, and the repeated delays of the Digital Economy Act Part 3.
- Enforcement powers to block access and support services should be amended to enable them to be applied at scale to 4-5 million adult websites without an individual application to the Court for each of them, to avoid disadvantaging UK-based business and ensure a level playing field.

The Bill should regulate to promote a privacy-protecting, standards-based, open, competitive, interoperable, audited and certified age verification sector as a foundation for a safer internet for children

Age assurance is a foundation stone for the building of a safer online world, because without it, no differentiation can be made between adult and child users in order to offer additional protections to the latter, while preserving the freedoms of the former. As such, it merits careful attention to define it, and to regulate it effectively.

The AVPA endorsed Baroness Kidron's *Age Assurance Standards Bill*, introduced in the last session in their Lordships' House, and its efforts to regulate a proportionate, privacy-protecting, standards-based age verification sector. We believe these principles should be incorporated into this Bill. (As a sector, we somewhat unusually, would welcome further regulation - and are indeed self-regulating in the absence of any legal requirement to do so.)

We are concerned to ensure that Ofcom has the relevant powers, similar to those held by the Information Commissioner under Article 42 of GDPR, to approve certification schemes that will create a regime based on audits against international technical standards. This will drive rigour, privacy and data security across the application of age assurance through co-regulation, freeing the regulator to focus on non-compliance.

The AVPA is also a leading member of the euCONSENT consortium, delivering EU-wide, interoperable, independent, privacy-preserving, standards-based age verification and parental consent infrastructure, with funding from the European Commission. This will make it much easier for tech companies to implement proportionate levels of age assurance without an intrusive effect on the user experience. The Bill should enable the UK to integrate with what is intended to be a global solution to deliver easily applied age assurance across the internet. The regulator should be able to require services to apply age assurance to an international standard it references, 'or its equivalent'.

Parliament should add a 6-month statutory time limit for the commencement of age verification measures to avoid the risk of 2-3 years delay while Codes of Conduct and guidance are perfected by Ofcom and the Secretary of State, and the repeated delays of the Digital Economy Act Part 3.

The risk otherwise is of the same degree of delay that beset Part 3 of the Digital Economy Act, where ministers repeatedly avoided the decision to commence this part of the legislation. They eventually announced they were never going to implement Parliament's will - a decision the High Court found to be worthy of judicial review until its full repeal was promised.

While the every-broadening need for age verification across a wide-range of online use-cases has reduced the impact of the "porn block" when it is eventually introduced, Parliament should relieve ministers of their discretion to determine when (and in their historic view, if) the measure should take effect.

Also, our experience of the thorough Ofcom process for developing guidance suggests there could be a very long delay before the new law is implemented and fully enforced unless statutory deadlines are included in the primary legislation. Ofcom is expected to issue a Call for Evidence, then draft proposals for consultation, including Codes of Conduct in relation to each of the duties; these then need to be agreed by the Secretary of State and laid before Parliament, with delays possible for amendments or objections at any stage. Realistically, this could easily become a 2-3 year process before duties apply, and typically enforcement will only be implemented in a staged fashion; from monitoring, to supervision and eventually to regulatory action.

The Audio-Visual Media Services Directive became law in the UK in September 2020. Detailed guidance was not published until October 2021, and in 2022/23 Ofcom intends just to “continue laying important foundations for age verification on adult services,” promising only a report into progress towards compliance by September 2022 - two years after the law came into force.

We are not criticising the rigor with which Ofcom apply themselves to their duties and consultations; rather we are recognising the urgency of the problems this Bill is designed to address, and arguing that the regulator should not let the best be the enemy of the good. Clearly the guidance, codes of conduct and other output from the regulator will need to evolve over time, not least to address changes in technology, but putting a basic regime in place quickly needs to be guaranteed within the legislation.

Enforcement powers to block access and support services should be amended to enable them to be applied at scale to 4-5 million adult websites without an individual application to the Court for each of them, to avoid disadvantaging UK-based business and ensure a level playing field.

The current enforcement mechanism would require the regulator to apply to the court for an order for each of some 4-5 million pornographic websites, which is clearly not a practical proposal. While there is an argument for retaining judicial oversight of the process as a whole, the Bill needs to allow for largescale enforcement action. The risk otherwise is that regulators only tackle the largest sites, and traffic rapidly diverts to smaller sites which are out of sight of the regulator. France and Germany have both taken this approach, and met with heavy resistance from the handful of sites they are targeting, who are fighting the regulators in court for discriminating against them, and seeking elaborate technical ways to evade enforcement.

In contrast. adult sites were generally willing to comply with the Digital Economy Act, provided, as they were assured by the British Board of Film Classification, that there would be a level playing field, and action would be taken swiftly against any site that refused to adopt age verification. Their greatest fear was the diversion of traffic to mid-market competitors as users were deflected by age checks to sites that were still not requiring them.

There is also a wider issue across all services regulated by the Bill, not only pornography, which is that UK established businesses will be at a significant competitive disadvantage, as Ofcom can take swift, administrative action against them, serving notices and imposing financial penalties without the need to go to court. Enforcement against services based overseas can only be achieved after individual court orders are obtained.

We are at the disposal of the Committee should you wish to hear from us as witnesses before your inquiry.

Yours sincerely,

Iain Corby

Executive Director

Age Verification Providers Association

About the AVPA

As an association, we work to:

- Inform and educate the public, industry, and media, on age verification solutions and technology.
- Promote a positive image of effective age verification and the age verification industry.
- Represent the industry to regulators and law makers for the advancement of best practice, socially-responsible age verification policy.

The AVPA was formed in 2018 from organisations involved in the UK's Digital Policy Alliance age verification working group, and created in response to a need for a uniform voice for the industry.

The AVPA is governed by a representative Board drawn from its member organisations, and its members comply with a comprehensive code of conduct, requiring:

1. Fairness and transparency
2. Use of appropriate verification methods
3. Privacy and Security
4. Accuracy
5. Independence
6. Responsibility

About age assurance

The essence of age verification is proving your age without disclosing your full identity.

Millions of UK citizens have completed online age checks, using them repeatedly on a daily basis to buy age-restricted goods such as alcohol and cigarettes or to access adult services such as gambling websites.

Age assurance is the collective term for age verification and age estimation. Verification methods require evidence such as a passport, electoral registration or adult mobile phone account; Estimation using artificial intelligence to assess age within a statistically-proven range based usually on biometric features such as facial image or voiceprints, or behaviours such as use of language or keyboards.

Age assurance is carried out to a BSI standard PAS 1296:2018. An independent audit and certification scheme demonstrates compliance with this, in addition to a UKAS and ICO approved scheme to show conformance with UK GDPR¹.

Age Verification Providers apply the most rigorous privacy-by-design methods to develop their architecture, are required by UK GDPR to be transparent with users about the use or retention of their data, which must be minimised.

Learn more at www.avpassociation.com

¹ Both operated by the Age Check Certification Scheme