

Written evidence submitted by the British Board of Film Classification (BBFC) (OSB74)

Online Safety Bill – Public Bill Committee

Executive Summary

The BBFC is the not-for-profit independent statutory regulator of film and video in the UK. The BBFC strongly supports the child protection aims of the draft Online Safety Bill, and all efforts to make the internet a safer place.

There are three key areas in which we believe changes could be made in order to enhance the Bill's effectiveness in relation to the regulation of online pornography:

1. **The apparent lack of a duty on many pornographic websites not to take action against illegal content, such as extreme pornography or prohibited images of children.** The Bill is weaker in this respect than Part 3 of the Digital Economy Act, which would have enabled the Age-verification Regulator to enforce against any site hosting extreme pornography.
2. **The lack of parity between online and offline content standards for pornography.** The current draft of the Bill suggests that harmful pornography will continue to be accepted online other than, potentially, on the very largest 'category 1' services.
3. **Powers to enable the regulator to take rapid enforcement action against non-compliant pornographic sites.** Without this deterrent, there is a risk that the legislation 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.

Introduction

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, and we classify some online adult 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), but in October 2019, the Government announced that they would not introduce age-verification under the DEA, but instead it would be introduced through the broader online harms strategy. 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 Committee.

Our submission primarily addresses the Bill’s provisions in relation to online pornography. Based on our experience as Age-verification Regulator, there are three key areas in which we believe changes could be made in order to enhance the Bill’s effectiveness in this area:

1. The apparent lack of a duty on many pornographic websites not to take action against illegal content, such as extreme pornography or prohibited images of children.
2. The lack of parity between online and offline content standards for pornography.
3. The need for rapid enforcement against non-compliant pornographic sites.

1. The apparent lack of a duty on many pornographic websites not to take action against illegal content, such as extreme pornography or prohibited images of children

In order to address the fundamental challenge of harmful content and activity, we must ensure that content that is unacceptable offline is unacceptable online. While the current draft of the Bill requires certain types of sites to address illegal content such as indecent images of children and ‘extreme pornography’, the table below (from the impact assessment published by DCMS) suggests that pornography providers which do not carry user-generated content or enable peer-to-peer interaction will have no obligation to deal with this egregious content.

Duty	All UGC services	Category 1	Category 2A	Category 2B	Pornography publishers ⁷⁶
Risk assessment duty: to assess the level of risk on the platform	✓	✓	✓	✓	✗
Illegal duty: to put in place systems and processes to minimise and remove priority illegal content and to remove non-priority illegal content when identified through user reporting.	✓	✓	✓	✓	✗
Child safety duty: If the platform is likely to be accessed by children, to put in place systems and processes to protect children from harmful content.	✓	✓	✓	✓	✗
Legal but harmful duty: to address legal but harmful content accessed by adults, through enforcing a platform’s own terms of service.	✗	✓	✗	✗	✗

The Bill is weaker in this respect than Part 3 of the DEA, which would have enabled the BBFC as Age-verification Regulator to enforce against *any* site hosting extreme pornography, regardless of whether the content was user-generated or otherwise.

Recommendation: The duties in relation to the offences set out in schedule 6 should apply to *all* providers of pornographic content.

2. The lack of parity between online and offline content standards for pornography

Currently, only 'category 1' services will have any responsibility to address content which may be harmful to adults. We do not know how many, if any, pornography services will be considered 'category 1' as the threshold is yet to be set, but the Government's stated intention is that this designation will only apply to "the largest online platforms with the widest reach including the most popular social media platforms".

Pornographic content that may be harmful to adults is already regulated offline, and very effectively. Under the Video Recordings Act 1984, the BBFC will refuse to classify potentially harmful content – including depictions of sexual violence that fall short of the very specific legal definition of extreme pornography, material that promotes an interest in abusive relationships such as incest, and acts likely to cause serious physical harm such as breath restriction or strangulation. Such content can normalise dangerous acts and attitudes leading to real-world harm and is widely available online. However, the current draft of the Bill suggests that this content will continue to be accepted online other than, potentially, on the very largest services (and even in this regard there is no commitment yet to follow the established offline standards for harmful pornography as per the BBFC's guidelines). Barnardo's has published [research](#) showing 70% of UK adults (and 75% of parents) want to see online and offline pornography standards aligned.

Recommendation: The duties in relation to 'legal but harmful content accessed by adults' should apply to all providers of pornographic content, and the definition of 'legal but harmful content accessed by adults' should specifically include pornographic content that the BBFC would classify R18 and content that the BBFC would refuse to classify.

3. The need for rapid enforcement against non-compliant pornographic sites

As Age-verification Regulator under the DEA, the BBFC believed that the best way to achieve child protection was to maximise voluntary compliance from the adult industry. From our engagement with the industry, it has always been very clear that both active investigation and swift enforcement were essential to ensure that compliant sites are not commercially disadvantaged by their non-compliant competitors. Without this deterrent, there is a risk that the legislation 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.

We were 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 our investigations 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 obscured. 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 therefore needs to be given as to whether any delays in enforcement under the Online Safety Bill, for example arising from the need for Ofcom to obtain a court order to use its business

disruption powers, could impact compliance by the adult industry and undermine the legislation's child protection aims.

Recommendation: The Bill must enable Ofcom to proactively investigate providers of pornographic content to ensure their ongoing compliance, and to swiftly commence business disruption measures in any cases of non-compliance.

Concluding remarks

The BBFC supports regulatory initiatives to make the internet a safer place and particularly the focus on protecting children from potentially harmful material online. As has been recognised by Ministers, the BBFC has unparalleled expertise in pornography and age-verification, and we look forward to working with Government and supporting Ofcom as the regulator to ensure that children are adequately protected from pornography and other harmful online content.

In summary, our recommendations are to enhance the Bill's effectiveness in relation to online pornography are:

1. The duties in relation to the offences set out in schedule 6 should apply to all providers of pornographic content.
2. The duties in relation to 'legal but harmful content accessed by adults' should apply to all providers of pornographic content, and the definition of 'legal but harmful content accessed by adults' should specifically include pornographic content that the BBFC would classify R18 and content that the BBFC would refuse to classify.
3. The Bill must enable Ofcom to proactively investigate providers of pornographic content to ensure their ongoing compliance, and to swiftly commence business disruption measures in any cases of non-compliance.

We would be available to give further evidence and answer any questions raised by our submission.

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