

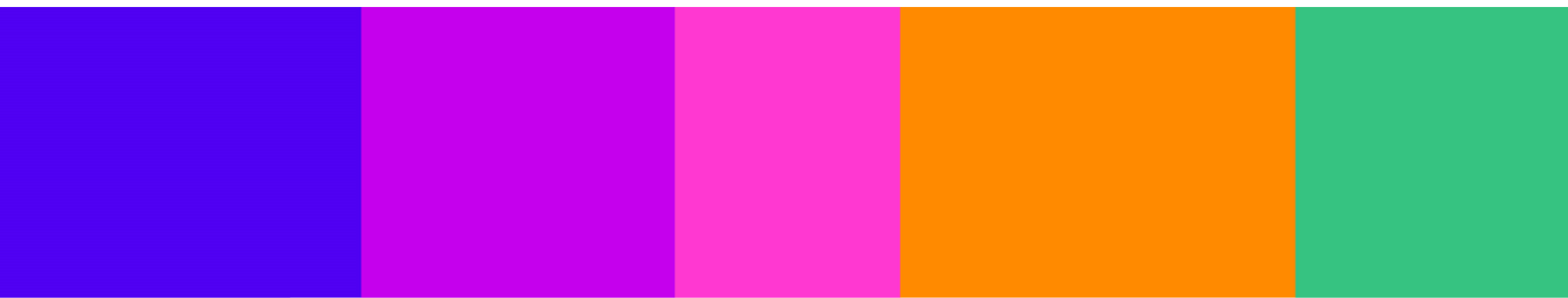
# Consultation response form

Please complete this form in full and return to [Part5Guidance@ofcom.org.uk](mailto:Part5Guidance@ofcom.org.uk).

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| <b>Consultation title</b>                   | Guidance for service providers publishing pornographic content |
| <b>Representing (delete as appropriate)</b> | Self   |

## Your response

| Question  | Your response   |
|---|---|
| <p><b>Question 1:</b> Do you agree with our proposed guidance on scope? If not, please provide any information or evidence in support of your views, including descriptions of services or content where you consider it is unclear whether they fall within the scope of Part 5.</p> | <p>1) Definition / approach to “pornographic content”</p> <p>I felt that Ofcom could have gone a bit further, in terms of explaining what it considers to be “pornographic content” (para 3.4 onwards).</p> <p>Especially, I would have liked to have seen how it how plans on assessing this in the event of a complaint.</p> <p>Section 6 - the section on “assessing compliance” - is very short and high level.</p> <p>For example, how will Ofcom assess whether a given image/page was</p> <p style="padding-left: 40px;">produced solely or principally for the purpose of sexual arousal</p> <p>?</p> <p>Clearly, this excludes works produced a different primary purpose, such as artistic purposes, or for self-empowerment or self-expression.</p> <p>But how will Ofcom approach that?</p> |



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|   | <p>Presumably in the face of complaints from some quarters that, if it looks like a nipple, it is <i>obviously</i> pornographic.</p> <p>2) GIFs</p> <p>I would have welcomed some clarity in Ofcom’s guidance as to whether it is going to interpret “GIF” strictly, meaning that only images conforming to the GIF89a Specification fall within scope, or if it will interpret “GIF” more loosely, to encompass other image formats, as long as those images are not in themselves pornographic.</p> <p>The latter approach makes far more sense, conceptually, as it seems nonsensical to me to say that an erotic written story is not regulated porn, but becomes regulated porn because someone has accompanied it by a non-GIF photo of a sunset, for example.</p> <p>3) Interpreting a “significant” number of users in the UK</p> <p>Ofcom is a principles-based regulator, so I would not expect to see definitive numbers as to what amounts to a “significant” number of users (para 3.20), or the like.</p> <p>Ofcom’s approach is a sensible one, and Ofcom should resist calls for it to specify numerical quantities.</p> <p>Doing so in the abstract runs the risk of leading to an over-extension of the regime, applying it to sites and services with, objectively, an insignificant number of users in the UK.</p> |
| <p><b>Question 2:</b> Do you have any comments on how our proposed guidance applies in respect of pornographic content created by generative-AI services within the scope of Part 5? Please provide any information or evidence in support of your views.</p> | <p>Looking slightly more broadly at AI in the context of Ofcom and Part 5, I suspect some people/organisations will be scraping sites they consider to be pornographic, and using “AI” image classifiers to purportedly say whether something is “pornographic” or not.</p> <p>And, quite possibly, using this to deluge Ofcom with reports of purportedly non-compliant services.</p> <p>I’m very much hopeful that Ofcom would recognise the inherent problems with this, and <i>especially</i> the problems which would arise if Ofcom were to attempt to use the same kind of approach in assessing complaints.</p>  |

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| <p><b>Question 3:</b> Do you have any comments on our proposed guidance in respect of the kinds of age assurance which could be highly effective? If you consider there are other kinds of age assurance which have not been listed that you consider could fulfil the proposed criteria, please identify these with any supporting information or evidence.</p> | <p>I think that Ofcom has done well to ensure that there is no requirement for in-scope service providers to pay commercial providers of age verification services.</p> <p>While this clearly remains an option, it is to Ofcom's credit that this is not mandatory.</p> <p>It seems to me that a number of the tools set out in the guidance could include self-hosted, Free software elements.</p> <p>This is welcome, recognising that not all consumers will be comfortable sending their personal data to a third party intermediary, and that some in-scope providers are individuals, lacking the funds of larger sites.</p> <p>Choice/control is key.</p>   |
| <p><b>Question 4:</b> Do you agree that service providers should use the proposed criteria to determine whether the age assurance they implement which is highly effective at correctly determining whether or not a user is a child? Please provide any information or evidence in support of your views.</p>   | <p>No response.</p>   |
| <p><b>Question 5:</b> Do you have any information or evidence on the extent of circumvention risk affecting different age assurance methods and/or on any steps that providers might take to manage different circumvention risks for different methods?</p>   | <p>Ofcom's approach - "methods of circumvention that are easily accessible to children and where it is reasonable to assume that children may use them" - is sensible and proportionate.</p> <p>Going further than this is, in my opinion, unlikely to be proportionate.</p> <p>Ofcom's note that in-scope providers should not "explicitly and deliberately encourage or enable child users to circumvent its age assurance process and/or access controls" is sensible.</p> <p>Ofcom should act carefully in respect of complaints that services with secure elements to protect the sensitive personal data being transmitted to and from in-scope sites – for example, being made available via TLS (https), which could inhibit content inspection at network level,</p> |

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|  | <p>or merely being available via a VPN or within .onionspace – are deemed to be non-compliant simply because of those measures.</p>   |
| <p><b>Question 6:</b> Do you agree with our proposed guidance that providers should consider accessibility and interoperability when implementing age assurance? Please provide any information or evidence in support of your views.</p>  | <p>No response.</p>   |
| <p><b>Question 7:</b> Do you have comments on the illustrative case study we have set out in the guidance? Do you have any supporting information or evidence relating to additional examples of how the criteria and principles might apply to different age assurance processes?</p>                           | <p>The guidance is clear and readable.</p> <p>It has useful examples of how Ofcom intends to apply the rules, and flowcharts to follow.</p> <p>Not quite a tick-box checklist, but still operationally useful and practical.</p>  |
| <p><b>Question 8:</b> Do you agree with our proposed guidance on the record-keeping duties? Please provide any information or evidence in support of your views.</p>   | <p>Ofcom’s guidance is helpful, in my view, in setting out what that should look like, and what it must contain.</p> <p>Having that structure is valuable.</p>  |
| <p><b>Question 9:</b> Do you have any comments on our proposed approach to assessing compliance with the duties on service providers who publish or display pornographic content, including on the proposed examples of non-compliance? Please provide any information or evidence in support of your views.</p> | <p>Paragraph 6.6 of Ofcom’s guidance is interesting and I suspect might be considered “load bearing” in terms of its approach to regulatory enforcement activity.</p> <p>It says:</p> <p style="padding-left: 40px;">We will include the harm or risk of harm to children in our prioritisation framework when considering:</p> <p style="padding-left: 40px;">a) the risk of harm or seriousness of the conduct; and</p> |

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|   | <p>b) the strategic significance of addressing the alleged contravention.</p> <p>I read this as saying that Ofcom is going to act proportionately (as it must) and sensibly (potentially in the light of quite vocal complaints) in its approach to enforcement, and that safeguarding children is going to be paramount.</p> <p>“Tube” sites and the like are probably quite centrally in the cross-fires here; individuals and their self-portrait photography and artwork, hopefully less so.</p> <p>If that is a fair analysis of Ofcom’s proposed approach then, yes, that seem a sensible, proportionate approach.</p> <p>(Please also see my answer to Question 1 in this regard.)</p> |
| <p><b>Question 10:</b> Do you have any comments on the impact assessment set out in Annex 1? Please provide any information or evidence in support of your views</p>  | <p>No response.</p>   |
| <p><b>Question 11:</b> Do you agree that our proposed guidance is likely to have positive effects on opportunities to use Welsh and treating Welsh no less favourably than English?</p> <p>If you disagree, please explain why, including how you consider the proposed guidance could be revised to have positive effects or more positive effects, or no adverse effects or fewer adverse effects on opportunities to use Welsh and treating Welsh no less favourably than English.</p> | <p>Dim ateb.</p>  |

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