Consultation response form

Consultation title	Guidance for service providers publishing pornographic content
Organisation name	Canadian Centre for Child Protection

Your response

Question	Your response
Question 1: 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.	Confidential? – NO **Content yet to fall in the Scope of Part 5** While Ofcom provided a comprehensive definition of the type of content that falls within the scope of Part 5, there are some areas Ofcom has left open for consideration. For example, Ofcom states they are likely to consider a service provider to have exercised control over the pornographic content appearing on its service where: 1) The service provider exercises editorial control over nature, selection or presentation of the content. For example, where a service provider has designed and provided interactive games featuring pornographic imagery on its service. 2) A service provider is responsible for live-streaming pornographic video content on its service. It is unclear why these are likely to be considered within the scope of Part 5. Questions: If Ofcom decides these are not within the scope of part 5, how will it be ensured that children cannot access this content? If these are to fall outside the scope of 5, where will they be covered? **Concurrence of pornographic content that falls in Part 3 and Part 5** Ofcom recognizes there may be instances where online services include some pornographic content which falls in scope of Part 3 (user-generated) and some pornographic content which falls in scope of Part 5. Ofcom states that in such cases, the content published by the provider will fall within the scope of Part 5.

Question	Your response
	It is unclear how content that falls under Part 3 and Part 5 and appears on the same webpage will fall within the scope of two different parts of the Online Safety Act. Will the content that falls within Part 3 and appear next to Part 5 content be automatically shielded from children by way of Part 5 duties?

Condition 3, links to the UK
A service has links with the UK for the purposes of Part 5 if either of the following conditions is met in relation to the service:
1) The service has a significant number of UK users, or:
2) The UK forms one of the target markets for the service, or the only target market

Ofcom has not defined significant, stating that service providers should be able to explain their judgement, especially if they think they do not have a significant number of UK users. Allowing service providers to interpret "significant" likely gives services too much discretion. This may lead to service providers erroneously determining they do not have a significant number of UK users to circumvent Part 5 duties.

Ofcom may wish to consider the following benchmark for assessing whether a service provider has links to the UK and should be subjected to Part 5 duties: if a service allows UK access and is at risk of hosting pornographic material then it must, at a minimum, have highly effective age assurance to prevent children from encountering it. Alternatively, Ofcom may consider eSafety's approach where online safety duties are applicable to service providers based on the number of active end-users in the past year[1].

Challenge Age
Ofcom states that service providers may consider implementing a 'challenge age' approach for estimation methods that are not sufficiently technically accurate within a specific age range. If a challenge age is not required, providers are unlikely to implement this procedure. Ofcom should consider mandating a challenge age. The use of supplemental age assurance methods to verify the age of users that would otherwise be undetermined can be witnessed in other jurisdictions. In Germany, the Kommission für Jugendmedienschutz (KJM) requires that additional ID check must be carried out when a user is not clearly of legal age. Such a procedure would also support the principle of accessibility. |

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[1] https://www.esafety.gov.au/sites/default/files/2023-11/Draft%20Online%20Safety%20%28Relevant%20Electronic%20Services%20-%20Class%201A%20and%20Class%201B%20Material%29%20Industry%20Standard%202024%20_0.pdf

Question	Your response
Question 2: 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.	Confidential? – NO A hypothetical scenario to consider: An open-source tool for AI text-image tool exists, its primary use and function is not to create pornographic content, but certain prompts result in the creation of pornographic content. How will Ofcom consider these tools regarding Part 5 duties?
Question 3: 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.	Confidential? – NO **Terminology and interpretation** How will Ofcom balance their idea of effective versus the service providers interpretation of effective? These will likely differ. As will the interpretation of the proposed criteria. Ofcom states it is the provider's responsibility to decide which trade-offs are appropriate. How will Ofcom determine whether the trade-off's taken by service providers are appropriate? Would this assessment occur before the method is deployed? Could reported failures in a chosen age assurance technique require some form of corrective action or improvement to prevent future failures? **A more prescriptive approach** Rather than providing a non-exhaustive list of methods that *could be* effective, Ofcom may consider the KJM's approach. The KJM created an evaluation procedure for assessing age verification systems, they also publish a list of evaluated age verification systems that fulfil the legal requirements for operators of adult content in ensuring minors do not access their platforms. **Kinds of age assurance that <u>could be</u> highly effective** <u>Zero-knowledge proofs</u> French regulator, Commission nationale de l'informatique et des libertés (CNIL) considered the "zero-knowledge proofs[2] [3]. <u>"Offline" age assurance</u> CNIL recommends the use of physical scratch cards as a method of offline verification. Such a process involves adults gaining access to a login identifier and password that would give them access to age restricted content. These cards can be made available in certain retailers, particularly those where age

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[2] https://www.cnil.fr/en/online-age-verification-balancing-privacy-and-protection-minors
[3] https://linc.cnil.fr/demonstration-privacy-preserving-age-verification-process

Question	Your response
	verification already occurs (alcohol, gambling, tobacco)[4]. Ofcom may consider including offline methods like this to the guidance. While providing the potential of a highly effective age assurance method, such a method also supports the principle of accessibility. Offline age assurance methods provide options that would not otherwise be accessible to certain populations, including those who do not have access to a cell phone, bank account, or credit card.
	Agencia Española de Protección de Datos (AEPD) In Spain the AEPD recently proposed new age verification rules and methods to ensure that children cannot access online pornography[5]. Ofcom may consider reviewing the AEPD's proposed proofs of concept for age verification to assess whether these concepts may function as highly effective age assurance methods within the UK.
	Kinds of age assurance that may not be highly effective Facial age estimation Given the risk of circumvention facial age estimation based on a static image alone does not provide a reliable method of age assurance. Only with additional checks and verification, facial age estimation *may* function as a highly effective age assurance method. For example, the KJM states facial age estimation though webcam with liveness detection can meet the requirements for reliable identification. Ofcom way wish to reconsider the effectiveness of facial age estimation as a standalone age assurance method. More about circumvention of facial age estimation is discussed in Question 5.
	Maturity assessments via questionnaires Ofcom may consider adding this method of age assurance to the list of methods not considered highly effective. CNIL states this method should be avoided given the elevated possibility of circumvention and the potential biases related to reading comprehension, language proficiency, and cultural references[6].

[4] https://www.cnil.fr/en/online-age-verification-balancing-privacy-and-protection-minors
[5] https://www.aepd.es/guides/technical-note-proof-of-concept-age-verification-systems.pdf
[6] https://www.cnil.fr/en/online-age-verification-balancing-privacy-and-protection-minors

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Question 4: 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.	Confidential? – NO As discussed earlier, the intended use of these criteria provides a high level of discretion to service providers. While Ofcom states that service providers must ensure that the chosen age assurance process fulfils each of the criteria, it is also stated that service providers have the responsibility to decide which trade-offs across these criteria are appropriate. Ofcom may wish to provide additional guidance on how these criteria are to be considered by service providers and identify whether there are certain trade-offs that are not appropriate for the purposes of highly effective age assurance. Moreover, Ofcom may consider incorporating these criteria into an evaluation procedure for assessing age assurance methods. Like the KJM, Ofcom may consider taking on the role of evaluating age assurance methods to ensure they meet the criteria. Consistent with the KJM, Ofcom may also consider a process where service providers can request Ofcom to evaluate certain age assurance methods they wish to use. This could help ensure service providers meet the criteria identified by Ofcom and may minimize the need for future enforcement of ineffective age assurance methods. Ofcom may also consider reviewing the AEPD's Decalogue of principles for age verification and protection of minors from inappropriate content[7]. This Decalogue identifies the minimum conditions that age verification systems must meet.
Question 5: 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?	Confidential? – NO There is evidence to suggest that bad actors can easily circumvent facial age estimation as a standalone age assurance method. For example, Wizz a popular app targeted toward teens, utilizes facial age estimation as its primary age assurance method. Wizz's design is such that all users undergo the facial age estimation process, if determined to be a minor, the user will only be able to connect with minors. Similarly, users estimated to be adults can only connect with other users deemed to be adults. In the age estimation process users submit a static photo of their face; these photos are only manually reviewed upon user complaints. Several media reports indicate that

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[7] https://www.aepd.es/guides/decalogue-principles-age-verification-minors-protection.pdf

Question	Your response
	adults with a sexual interest in children have been able to by-pass the app's age estimation system and connect with children on the app [8],[9],[10],[11].

Drawing from their research on sextortion occurring on popular social media apps, the Network Contagion Research Institute's (NCRI) director of intelligence believes that Wizz's facial age estimation system is not strong enough, stating:

"We've seen threat actors who can bypass age verification facial recognition by having their cousin or brother take a selfie, and then they will be off and running on the platform," and *"it's not just threat actors — if you're under the age of 13, it's very easy to have an older sibling have a photo taken, as well."*[12]

The shortcomings facial age estimation was further evidenced by a Canadian reporter who was able to create a profile of a 14-year-old girl on the app[13]. Finally, analysts from the Canadian Centre for Child Protection ages 23 and 25 went through an age assurance process on a popular app that deployed facial age estimation as a standalone method. Both analysts were able to create accounts as 17-year-olds. |
| **Question 6:** 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. | Confidential? – NO

Yes, service providers should consider accessibility and interoperability when implementing age assurance. However, it is unlikely that services providers will do so in an effective and meaningful way unless they are mandated to do so. Meaningful efforts to ensure the principles of accessibility and interoperability are incorporated into age assurance procedures are likely incur additional costs on behalf of the service providers. |

[8] https://www.news4jax.com/news/local/2023/07/29/20-year-old-man-poses-as-teen-on-app-to-rape-13-year-old-girl-deputies-say/

[9] https://www.wnky.com/georgetown-man-charged-with-rape-involving-15-year-old-he-met-online/

[10] https://www.lehighvalleylive.com/news/2021/07/pburg-man-21-charged-with-sexually-assaulting-girl-younger-than-16-authorities-say.html

[11] https://www.click2houston.com/news/local/2023/04/19/22-year-old-houston-man-accused-of-sexually-assaulting-15-year-old-he-met-through-online-app/

[12] https://www.nbcnews.com/tech/social-media/wizz-tinder-app-aimed-teens-removed-apple-google-stores-rcna136607

[13] https://www.lapresse.ca/actualites/alertes-contre-une-appli-de-rencontre-pour-ados/2024-02-13/wizz/pre-tendre-etre-un-ado-un-jeu-d-enfant.php

Question	Your response
	It should be assumed that any procedures or considerations that are not mandated and are likely to incur costs to service providers, will not be implemented by service providers.
Question 7: 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?	Confidential? – Y / N
Question 8: Do you agree with our proposed guidance on the record-keeping duties? Please provide any information or evidence in support of your views.	Confidential? – NO Should Ofcom consider providing guidance for record keeping and retrieval for circumstances where a report is made that identifies a failure in the age assurance scheme? These reports and corresponding records should be used to analyze any failures of the age assurance scheme and, if possible, identify corrective actions.
Question 9: 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.	Confidential? – Y / N
Question 10: 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	Confidential? – Y / N

Question	Your response
Question 11: 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? 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.	Confidential? – Y / N

Please complete this form in full and return to Part5Guidance@ofcom.org.uk.