

Emailed to: Part5Guidance@ofcom.org.uk

05 March 2024

Consultation: Ofcom Guidance for Service Providers Publishing Pornographic Content

Thank you for the opportunity to comment on the consultation, regarding Guidance for Service Providers Publishing Pornographic Content. In this response we have provided:

Section 1: Introduction to the Trust Alliance Group (Including the Communications Ombudsman and the Internet Commission)

Section 2: General Comment

Section 3: Answers to Consultation Questions

Section 1: Introduction to the Trust Alliance Group (Including the Communications Ombudsman and the Internet Commission)

Trust Alliance Group is a not-for-profit private limited company established in 2002 which runs a range of discrete national Alternative Dispute Resolution (ADR) schemes across different sectors, including the Communications Ombudsman, approved by Ofcom, and the Ofgem-approved Energy Ombudsman.

Our purpose is to build, maintain and restore trust and confidence between consumers and businesses and we're developing diverse capabilities and expertise in a range of areas including digital alternative dispute resolution and case management technology.

The Communications Ombudsman provides independent dispute resolution services, aiming to put consumers back into the position they were in before the issue occurred, whilst helping providers understand their customers and improve their experience.

With over 1,450 telecommunications companies signed up to our scheme - and over 15 years' experience in the communications sector - we are one of the alternative dispute resolution (ADR) schemes approved by Ofcom to impartially and independently handle disputes between consumers and providers.

In 2023 we accepted 25,000 disputes about providers in the communications sector and, using our insight, we continue to help providers improve their customer service.

The Internet Commission – a non-profit organisation which promotes ethical business practice to counter online harms whilst protecting privacy and freedom of expression and increase platform accountability – was acquired by the Trust Alliance Group in 2022.

The Internet Commission offers:

- Support to organisations who want to achieve high standards in online trust and safety
- Knowledge exchange where companies can discuss challenges and solutions related to tackling online harms

- A bank of good practices and reporting on the state-of-the art regarding governance and procedures of moderation of user-generated content online.

Section 2: General Comment

There are concerns regarding the long and short-term impact on under-18s of seeing pornographic content and hope that this will be covered in the next consultation on guidance and codes for the protection of children.

Through the Internet Commission's research work – looking at examples of best practice – we are aware of a service provider who has partnered with a mental health service to signpost additional support to users who may benefit from this. Users may text the name of the organisation to the mental health service provider to be connected with a counsellor immediately. It is also beneficial to consider mental health support and robust wellbeing programs for content moderators to ensure better outcomes. There are a number of charities that provide specific support for children that providers could signpost users to.

Section 3: Answers to Consultation Questions

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.

We were initially concerned that search engines had been excluded from the scope of Part 5, however, we are pleased they are covered in Part 3 and will therefore be covered by the next consultation on guidance and codes for the protection of children. This future work will be particularly important, given the results of the report, recently commissioned by Ofcom, showing the prevalence and wide availability of content that glorifies or celebrates self-injury via Internet search engines.

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.

Information obtained for the [Internet Commission's first Accountability Report](#) in 2021 identified various practices concerning age assurance, across the two cohorts of businesses assessed.

Practices were placed within a maturity model, which begins at Stage I: Elementary and goes up to Stage V: Transforming. An age assurance practice that falls under Stage I is the implementation of an age gate that relies solely upon the self-declaration of age. Self-declaration of age is entirely unreliable. Those users who are incentivised to lie about their age will do so and will likely face little or few consequences for doing so - if they are found to have done so. For many platforms, especially those where engagement drives profits through advertising, there has been very little commercial incentive to block users' access to the service based on age or to punish users if they evade what few blocks are in place.

We discovered this underlying commercial reality when looking at a particular platform in our cohort which had developed such a business model and did not require further age checks despite hosting content labelled 'mature' by its creator. However, the same platform did operate 21+ age gates on channels featuring

promotions of or sponsorships by alcohol brands. While these gates are still inadequate (relying on self-declaration) they do demonstrate a responsiveness to more tightly regulated industries.

It is worth noting that the age gates on this platform were accompanied by temporary cookies which would be dropped, for a short time, to restrict a user's ability to create an account with another date of birth if they were blocked by that age gate. This sub-practice was again found to be an immature practice, particularly in comparison with other platforms.

One such member of the cohort used self-declared age gates but supplemented this with additional tools to prevent users circumventing the system and were able to build a more holistic approach to age detection throughout the platform.

These (18+) age gates were buttressed by tools which - if a prospective user were to enter details that did not meet the requirements of the age gate - would lock those credentials until the user turned 18 and so were longer lasting than those used by the previous platform. The platform also deployed automated tools to detect underage users via photographs, biographies and private messages. Suspected underage users' accounts were suspended and could only be reinstated once their age had been verified as 18+ by a third-party service.

Crucially, this platform's business model was driven by paid subscriptions rather than advertising and engagement, such that it was not the case that all users were equally valuable to them and equally welcome on the platform. It was also built to facilitate real-life meetings between users and so there was greater commercial incentive for the platform to enforce its Terms of Service and ensure the pool of users on the platform were of age.

In 2021, the accounts suspended for being underage as a proportion of all accounts suspended was 18% on the second platform. On the first platform, there was no single category including 'underage' as a reason for account suspension. Suspension could only fall under the category of 'other', which made up around 54% of all suspensions.

What has become clear through our work with companies and platforms catering to different demographics, and perhaps appealing to others, is that a one-size-fits-all approach is rarely appropriate.

On one platform designed for children, there was no specific need for age assurance or verification, despite there being an age limit of 13 and under in the Terms of Services, because it did not provide communication tools enabling users to privately communicate with one another.

While the idea of a child-only platform may raise concerns – in that it would appear to be the ideal location for a predator or bad actor to operate within a walled garden – circumvention of mechanisms making it child-only, coupled with the absence of the means to privately communicate and the introduction of additional moderation tools negated much of the risk.

Other differences, including business model, as described above, and the outcome of use (e.g. in-person meetings), mean that varying levels of assurance should be required and applied to different platforms. This principle should equally be applied to non-users, or those whose ages cannot be verified.

Platforms should be equipped with the tools and rules to conduct an effective risk assessment of their platform and determine the requisite level of age assurance for each part of the user journey or segment of the platform.

Approaching the issue with a sensitivity to the differences between platforms will foster a dynamic ecosystem wherein platforms can comply without threatening to limit users' experiences and more closely approximate real-world approaches: for example, mirroring the kind of visual age estimation one might expect when buying a ticket to see a film in a cinema vs the more stringent checking of identity documentation when buying alcohol or, even more so, opening a bank account.

Providers will constantly need to stay ahead of the game as children find ways around the age assurance measures in place. Two partner organisations emphasised the importance of the front-facing image of the platform to minimise the interactions children have with the service itself. There is a greater risk to child users if a service is presented in a manner which is appealing to children and an ineffective age verification tool is in place. Thus, the remedy to such a risk lies in marketing or advertising the service in such a way that does not appeal to children. Within the service itself, one partner organisation tailors its advertisements via user segmentation which may have an indirectly positive impact in ensuring underage users do not see unsuitable or harmful advertising.

Evidence concerning the above can be provided if required – this includes both qualitative and quantitative data. Please do not hesitate to contact us if you would like further information regarding our response. Our response is not confidential.

For more information regarding this response, please contact:

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Senior Leader – Policy and Public Affairs

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