

Regulatory Triage Assessment (RTA)



Department
for Culture
Media & Sport

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| Title of regulatory proposal | <i>Age Verification for pornographic material online</i> |
| Lead Department/Agency | DCMS |
| Expected date of implementation | TBC |
| Origin | Domestic |
| Date | 27/01/2016 |
| Lead Departmental Contact | Henry Anderton (020 7211 6110) |
| Departmental Triage Assessment | Fast Track |

BRU (SGP) signoff: *[Insert name]* Date: DD/MM/YYYY

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Chief Economist signoff: *Paul Crawford* Date: 01/02/2016

Note: Chief Economist sign-off not required for Trivial / Mechanical measures.

SUMMARY

Rationale for government intervention

Currently, children and adolescents in the UK can access and consume pornography online very easily. One in ten UK visitors to adult sites in May 2015 were children. Children viewing online pornography can be viewed as a demerit good. Evidence suggests that accessing porn is detrimental to children's development and children are likely to be not sufficiently informed to make optimal consumption decisions. Therefore, there is a rationale for government intervention. This is similar to the rationale for restricting access to hardcore pornographic DVDs to over 18 year olds in the offline market. Addressing these issues is a manifesto commitment and in July 2015 the Prime Minister committed to consult on this issue.

Policy options

The Government has identified a preferred option on which it is inviting views in a consultation.

Option 0: Do nothing - no action taken by Government.

Option 1: A new requirement in law, making it illegal to distribute online pornography within the UK without age verification controls; a new regulatory framework to enforce and monitor compliance; and working with the payments industry and other ancillary services to address the business models of non-compliant sites.

Assessment of business impact

Payment service providers may incur one-off costs to make minimal changes to existing monitoring and compliance processes which we estimate at £900,000 following discussions held with key stakeholders from the payments industry. Further, payment service providers are likely to incur ongoing costs in subsequent years depending on the amount of non-compliant sites; these are estimated to be £900,000 p.a. which is in line with expectations of the industry. Given that the regulatory role (and therefore costs) will not sit with the payment service providers – the total gross annual costs to business are therefore expected to be less than £1 million.

UK online porn providers are already required to have age verification in place and are likely to face no/minimal additional costs.

Conclusion: Gross costs to business per year (2014 prices, 2015 present value) are estimated to be £900,000. Further data on the exact costs to non-

UK business (commercial porn providers) depends on the precise scope of the legislation and the final regulatory framework. Estimates are not yet available, and further information is sought through the consultation.

Rationale for Triage rating

Annual gross costs to UK business are estimated to be £900,000 - below the £1m p.a. threshold to qualify for the fast-track.

SUPPORTING EVIDENCE

Rationale for government intervention

The Government is clear in its rationale for intervention - to ensure sufficient and proportionate protections around pornographic content in the online world, as exist in the offline world. Although it is important to acknowledge that causal/determinative links between the viewing of pornography by young people and criminal offences/other negative social impacts later in life require further analysis, existing research demonstrates that pornography, and its proliferation on the internet, are a concern amongst young people, and also their parents and carers. Longitudinal studies have also established possible links between the viewing of hard-core/violent pornography by younger people and increased sexually aggressive behaviour later in life.

A short overview of evidence is provided in the table below, and is further set out in the consultation document itself:

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|-----------------------|---|
| 1.4 million... | ...unique visitors under 18 accessed pornographic sites from their desktop ¹ . This represents... |
| c.20% | ...roughly one fifth of under-18s accessing the internet ² . |
| 13% | Of children aged 6-14 visited a pornographic site in May 2015 ³ |
| 1 in 5 | of children aged 11-17 surveyed on behalf of the NSPCC's ChildLine service said they'd seen pornographic images that had shocked or upset them ⁴ |
| 70% | Of 18-year-olds surveyed felt that pornography can have a damaging impact on young people's views of sex and relationships ⁵ . |

¹ ComScore data, May 2015

² Ibid.

³ Ibid.

⁴ www.nspcc.org.uk/fighting-for-childhood/news-opinion/online-porn-evidence-impact-young-people/
(an online survey of 2,000 children)

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| 78% | Of women questioned believed that pornography encourages society to see women as sex objects (and 61% of men) ⁶ |
| 45% | Of 18 to 19-year olds frequent internet users who viewed pornography reported that in hindsight they were too young when they were first exposed to it ⁷ |
| 6 x | One study found that adolescents who viewed violent pornography were six times more likely to report engaging in sexually aggressive behaviour than their peers who did not ⁸ |

Children viewing online pornography can be viewed as a demerit good, because it is socially undesirable for children to consume porn due to the perceived negative effects on the child consumers themselves, and because they are not sufficiently informed to make optimal consumption decisions. Demerit goods have negative consumption effects either on the consumer or on others, and hence restriction of their consumption creates a net benefit to society, even where there may be consumer demand. Other examples of demerit goods include R18 material, prostitution and hard drugs, which are similarly banned by legislation. Without intervention, access to hard-core pornographic material (from non-UK sites) will continue to be easily available for under 18 year olds on the internet (i.e. without robust age verification systems in place). In the case of online pornography a difference in legislation between children and adults should be made since children and adults are likely to respond differently to interventions. For adults, the most appropriate intervention (to correct the information failure) is to provide the information. Children might be unable to digest this information and thus a different intervention is required. In addition, the harm from watching pornography online is most likely to be greater for children.

The Government's intention is to provide sufficient and proportionate protections for children online. Currently, none of the most-visited sites in the UK which provide pornographic content have robust age controls in place - as they are not UK-based and therefore not subject to the regulatory regime in place for sites which are based in the UK (for which age verification is already mandatory). In the offline world,

⁵ Parker, I. (2014). *Young people, sex and relationships: The new norms*, Institute for Public Policy Research, <http://www.ippr.org/read/young-people-sex-and-relationships-the-new-norms>

⁶ Ibid.

⁷ Livingstone, S. and Bober, M. (2004). *UK children go online: surveying the experiences of young people and their parent*⁸, LSE Research Online.

⁸ Ybarra, M. L., Mitchell, K. J., Hamburger, M., Diener-West, M., & Leaf, P. J. (2011). *X-rated material and perpetration of sexually aggressive behaviour among children and adolescents: is there a link?*. *Aggressive Behaviour*, 37(1), 1-18.

however, DVDs containing explicit pornographic content are subject to age controls, and can only be sold in licensed sex shops. Further, Peter Wanless, Chief Executive of the NSPCC, said: “We don’t want children to learn about sex and relationships through the warped lens of adult pornography – there are good reasons for restricting pornographic magazines and DVDs to adults which the NSPCC has long argued should apply equally online. The easy availability to children of online pornography, much of it extreme, violent and profoundly degrading, is of deepening concern. It can leave them feeling frightened, confused, depressed or upset”.

Therefore, considering the demerit good aspects aligned with the arguments for protection of children from exposure to and access of pornographic materials which they would most likely not be able to access legally in the offline world, there is a rationale for government intervention. The Government committed in its manifesto (spring 2015) to introduce age verification for access to all sites containing pornographic material, and in July 2015, the Prime Minister set out the Government’s intention to consult on potential options to meet this commitment.

Policy options

The Government is consulting on a preferred option for delivery of the policy (and manifesto commitment):

Option 0: Do Nothing

‘Do Nothing’ is not considered here as a viable or preferable option, given the case for intervention as set out above.

Option 1: New legal requirement, and new regulatory framework (preferred option)

Summary: Establish a new requirement in law for commercial providers to have in place robust age verification controls for online pornographic content in the UK provide online pornographic content in the UK with robust age verification controls in place.

• Legislate to establish a new regulatory framework, underpinned by civil sanctions.

A new regulatory framework and civil regime would:

- Involve giving a regulator or regulators powers to enforce the new law, supported by a sufficiently flexible enforcement regime;
- Monitor compliance with the new law by commercial pornography providers;

- Identify sites which are in breach and notify them of this, giving them a period of time within which to become compliant;
- Enable those that support the business model of pornographic content providers (such as payments, advertisers and other ancillary services) to withdraw services from commercial providers in breach of the law;
- Notify providers of payment/ancillary services of sites in breach, enabling them to withdraw services from such sites;
- Impose requisite sanctions where breaches have been identified and providers remain non-compliant;
- Ensure a proportionate and prioritised regulatory approach to monitoring and enforcement;
- Give the regulator discretion to set and monitor standards for age verification controls.

Under this option, the Government would establish a new law, making it an offence to distribute online pornography in the UK without age verification controls. The government would place a clear expectation on all parts of the online pornography industry – the commercial pornography providers, payments systems and ancillary companies on commercial sites, and others – that they are responsible for ensuring that pornographic content is not made available without age verification controls in place.

Government's intention is to establish a new regulatory framework, and to introduce new regulatory powers where required, in order to:

- Enforce the new law, supported by a sufficiently flexible enforcement regime;
- Monitor compliance with the new law by commercial pornography providers;
- Identify sites which are in breach and notify them of this, giving them a period of time within which to become compliant;
- Enable those that support the business model of pornographic content providers (such as payments, advertisers and other ancillary services) to withdraw services from commercial providers in breach of the law;
- Notify providers of payment/ancillary services of sites in breach, enabling them to withdraw services from such sites;
- Impose requisite sanctions⁹ where breaches have been identified and providers remain non-compliant;
- Ensure a proportionate and prioritised regulatory approach to monitoring and enforcement;
- Give the regulator discretion to set and monitor standards for age verification controls.

⁹ The Government is consulting on appropriate and proportionate sanctions in the consultation document.

Under this arrangement, the Government would work with payment service providers (credit card companies, banks, other providers of online payment systems such as PayPal, and other companies involved in online payments processes) to ensure that all sites providing pornographic content to consumers in the UK without robust age verification systems in place become compliant either by ensuring their services are not available in the UK, or by implementing adequate age verification for those services. Should the merchant owning the website not become compliant, payment service providers would have processes in place to ensure their payment facilities can be discontinued.

Assessment of business impact

Option 1: New legal requirement, and new regulatory framework

Transitional costs for **payment service providers** in the first year of adapting systems and monitoring to ensure compliance are likely to be below £1 million, especially considering that the major providers in this field (e.g. credit card companies, banks, other providers of online payment systems such as PayPal, and other companies involved in online payments processes) are major international brands and subject to a wide array of differing international regulatory regimes with which they must ensure compliance. The existing compliance system around payments has been in place since 2002, and is well established. Thus we estimate the costs at £900,000 which is line with industry expectations given the regulatory role will not sit with them. This figure is based on discussions held with key stakeholders from the payments industry – including credit card providers and banks, and also trade associations representing the UK credit card and payments industry.

Further, payment service providers are likely to incur ongoing costs in subsequent years depending on the amount of non-compliant sites which are also estimated to be £900,000. As above, this figure is based on discussions with representatives from the payments industry. Payment service providers have in place existing monitoring and compliance processes to ensure that merchants comply with the laws of the country in which they are based, and also in which they provide goods and services. The Government's proposed approach is also for the regulator to take a proportionate approach, and to target the most popular commercial sites visited by UK consumers. Another key financial concern for payment providers would be the risk of costs arising from legal challenges from sites/businesses from which payment services would be removed; however, the provision of legal underpinnings for such removal of services could negate this risk.

Estimates of costs to industry of an underpinning civil or criminal offence are not known at present but are likely not to impact UK online pornography providers since they already have age verification in place. We are aware that other major pornography providers are preparing age verification controls and some already have these in place for example in Germany. Details on precise costs are not known,

and further detail is sought through this consultation. Enforcement costs, such as fines imposed on online porn providers which are found to be in breach by the regulator, are another potential cost to businesses (although this is dependent on the nature of the regulatory regime). An example of recent regulatory action in the online space - with ATVOD regulating UK-based pornographic websites - was the action taken against Playboy TV UK/Benelux Ltd. in January 2013, whereby a financial sanction of £100,000 was imposed for breaches. ATVOD ruled that the UK business was ‘...operating two websites which provided access to hard-core pornographic material without adequate safeguards to protect children’. Again, however, caution should be exercised before any assumptions are made about the potential scale of fines, or indeed how a new regulator would operate in respect of websites hosted overseas.

The costs of increased regulatory powers, and where these costs will fall, is not known at this stage, as the scope and activity of the new regulatory powers is a matter in which government is consulting. This will form the basis of a final stage RIA once the scope is known and further data is available. It is Government’s intention that the regulatory framework will be proportionate, based on available resource, and take a pragmatic and proportionate approach to delivery of the policy aims. However, it is crucial to note that the Government is not at this stage setting out precisely how a regulator might operate – its functions, powers and enforcement duties, for example – in advance of the consultation. We will seek views on this in our consultation, and use this evidence to ascertain whether and how such a regulatory framework might operate.

It is the Government’s assessment that the preferred approach will deliver both the legal clarity needed to require commercial providers of pornography to implement age verification controls on their sites in the UK, and also that the regulatory framework will be required to underpin this new law and deliver the policy aims effectively. Whilst non-regulatory solutions – such as awareness raising campaign work, and further voluntary activity on the part of industry – certainly remain possible parts of the solution in this area, it is Government’s view that to specifically deliver its manifesto commitment, a new law, and underpinning regulatory framework, are needed.

Risks and assumptions

Assumptions have been made with regard to:

- Withdrawing payment processes is effective in leading sites hosted overseas to implement AV controls in order to comply with UK domestic law;
- The threat of withdrawing payments being a sufficiently strong lever to incentivise sites which also provide free content alongside paid-for content to implement AV;
- Underpinning law and regulatory framework will lead sites to implement AV.

The policy option set out above also gives rise to the following risks:

- Deterring adults from consuming content as a result of privacy/ fraud concerns linked to inputting ID data into sites, also some adults may not be able to prove their age online;
- Development of alternative payment systems and technological work-arounds could mean porn sites do not comply with new law, and enforcement is impossible as they are based overseas, so the policy goal would not be achieved;
- The potential for online fraud could raise significantly, as criminals adapt approaches in order to make use of false AV systems / spoof websites and access user data;
- The potential ability of children, particularly older children, to bypass age verification controls is a risk. However, whilst no system will be perfect, and alternative routes such as virtual private networks and peer-to-peer sharing of content may enable some under-18s to see this content, Ofcom research indicates that the numbers of children bypassing network level filters, for example, is very low (ca. 1%).