

Age verification for pornographic material online

Department for Digital, Culture, Media and Sport

RPC rating: fit for purpose

Description of proposal

This measure will introduce a new requirement in law, under the Digital Economy Act, making it illegal to distribute online pornography within the UK on a commercial basis without age verification (AV) controls. Currently, this is required only of UK-based online providers of access to pornography (hereafter, pornography providers), with the result that UK residents can gain access to such material from non-UK providers without AV. The measure also introduces a new regulatory framework, underpinned by civil sanctions, that charges an existing regulatory body, the British Board of Film Classification (BBFC), with compliance monitoring and enforcement.

The regulator will be empowered to direct internet service providers (ISPs) to block access to sites which fail to comply with appropriate AV requirements and those which host extreme material. The regulator will also be able to direct ISPs to block access to sites containing ‘extreme pornography’,¹ regardless of whether AV controls are in place. Additionally, the measure will introduce requirements that enable the regulator to notify payment providers and other ‘ancillary service providers’ of non-compliant sites, with the intention that services are withdrawn and thus the business models of non-compliant sites disrupted.

The objective of the policy is to prevent the potential harms to children from accessing pornographic content online. The Department notes that, currently, children and adolescents can easily access and consume pornography online; evidence suggests that accessing porn can be detrimental to children’s development, and children are likely to be not sufficiently informed to make optimal decision outcomes. Government also wants to intervene to ensure that those who profit from pornography being made available online do so in a responsible way.

¹ As defined in the Section 61 of the Criminal Justice and Immigration Act 2008.

Impacts of proposal

Costs

Cost to payment service providers

Payment providers and advertisers are already contractually obliged to disengage their services from any company found to be acting illegally. Therefore, once notified of the illegal behaviour, payment service providers and advertisers will be required to disengage from non-compliant pornography sites.

The IA explains that, at a minimum, the duties imposed by the proposal will require each of the three largest payment service providers to assign an extra member of staff. The average wage for a suitable employee is around £40,000 a year; therefore, the cost to the large payment service providers is at least £0.1 million. During consultation, the payment service providers estimated that their processing costs would be below £1 million each year, as they have existing processes for withdrawing services in relation to illegal activity. The Department therefore assumes a cost to payment service providers of £0.5 million each year for the additional labour requirements and any other processing costs.

The Department does not assess costs to advertisers and other third parties, stating that ‘no hard evidence’ was submitted in response to the consultation of how much advertisers would have to invest in processes to work effectively with the regulator. They do, however, state that due to ‘other compliance processes in place’, these costs are estimated to be low.

Cost to internet service providers (ISPs)

It is anticipated that ISPs will incur costs updating their systems and blocking access to non-compliant sites.

The IA states that ISPs have found it difficult to provide costs estimates, because the costs greatly depend on the regulator’s requirements. Notwithstanding, it highlights that the Secretary of State’s guidance to the regulator recommends a Domain Name System (DNS) level approach, which it identifies as the cheapest option.

The Department assumes, without explanation, that the number of sites to be blocked would be between 1 and 50 per year, and that blocking would be on a DNS level. Estimated costs for the potentially required ‘system update’ were obtained from

a number of large ISPs, and these estimated costs ranged from £100,000 to £500,000. The IA further notes that some ISPs, on the aforementioned assumptions, may be able to absorb on-going operational costs. Nevertheless, to account for uncertainty, the Department estimates these costs to be ongoing.

Cost of regulatory body

Pornography providers' use of age verification will be monitored by an established regulator, the BBFC.

The Department bases its upper bound estimate of regulator cost on the costs of the Gambling Commission, which also regulates an online industry with a significant amount of businesses based overseas. The Gambling Commission's total expenditure on operational costs including depreciation was £15.8 million in 2014/15. The Department expects the pornography regulator to cost half as much, since the Gambling Commission has additional duties, including issuing licences and conducting on-site inspections. Therefore, the upper bound estimate of the cost of the new regulator is £7.9 million.

As aforementioned, Parliament has now formally approved the BBFC as the regulator. After an initial assessment the BBFC has estimated the cost for the set-up of the regulatory function to be approximately £1 million. The Department identifies this as the lower bound estimate of the cost of the new regulator.

Without further explanation, the Department proffers the average of these two calculations - £4.45 million, as its best estimate. The Department indicates that, at this stage, there is no intention to recover the regulator's costs from industry; rather the Government will fund the regulator through a grant agreement (p. 15).

Costs to pornography providers

The IA does not assess the costs to pornography providers resulting from the proposal, because it places no new regulatory requirements on UK-based pornography providers.

Costs to advertisers

The Department states that there has been no 'hard evidence' submitted in response to their consultation of how much advertisers would have to invest in processes to effectively work with the regulator. Because there are pre-existing compliance processes in place, the Department estimates these costs will be low.

Cost to consumer

The Department notes that there may be a cost to the user to pay for the AV process. In the absence of a clear understanding of how the AV process will be implemented in practice, the Department is unable to estimate the costs to the consumer of the measure, or even the approximate scale of these costs.

Other

The Department states that there may be a cost to third party age verification services which undertake a voluntary certification scheme.

Benefits

The Department has not been able to monetise the benefits. Nonetheless, the IA offers a qualitative description of a number of benefits, which include:

- Direct benefits to children, and indirect benefits to parents and society, as a result of reduced harm, stemming from decreased access to pornography by children and adolescents;
- Reputation benefit to online porn providers who will now adopt AV processes, and for ancillary services which withdraw from non-compliant sites; and
- Benefit to AV software providers as a result of increased demand for their services.

The RPC verifies the estimated equivalent annual net direct cost to business (EANDCB) of £0.8 million.

Quality of submission

The Department has provided a proportionate assessment of the impacts of the proposal. The overall net present value (NPV), business NPV and equivalent annual net direct cost to business (EANDCB) figures are proportionately evidenced.

The IA would nonetheless benefit significantly from addressing the points below:

- *EANDCB*. An uplift to the EANDCB of £0.3 million compared to the final stage IA seemingly relates to the newly included provision for internet service providers (ISPs) to block access to non-compliant sites, with £0.3 million the mid-point of the estimated cost. This should be made clearer within the IA.
- *SaMBA*. Since the Department's submission of its final stage IA, the standard of detail and explanation which the RPC expects to be included within the

SaMBA section of IAs has been raised. The Department provides a basic qualitative explanation of why exemptions for small and micro businesses are not appropriate, and would, for example, prevent achievement of the policy's objectives (p. 14). The IA would have benefited from including evidence or reasoned numerical estimates to support its central assumption that many porn providers would be classified as small or micro businesses.

The SaMBA also notes that 'the requirement to block non-compliant sites could have a negative impact on smaller ISPs with a much smaller workforce.(p.14)' The IA would have benefited from outlining a plan for monitoring the impact on these businesses.

- *Lack of sensitivity analysis concerning costs to ISPs.* The IA would have benefited from providing a more detailed qualitative description of what a 'system update' entails. The IA would also have benefited from including a brief summary of the alternatives to the DNS option, which it assumes will be taken forward by the regulator. This would have identified the potentially higher costs to ISPs of this part of the measure if alternative options were to be taken forward. This might also have given a clearer indication of whether these costs would be one-off, or recurrent.

Additionally, the Department provides no evidence or explanation for its assumption that 'from 1 to up to 50' sites per year would be blocked. Furthermore, the implications for the cost to ISPs, of the number falling at extremes of the range, or outside it (i.e. more than 50), are not explained.

- *Impacts of guidance on business.* In the absence of the pending regulator (BBFC) guidance, or any substantial description of what this is likely to entail, the Department is unable to identify the familiarisation or transition costs of this measure. The RPC notes, however, that these are unlikely to bring the EANDCB above the £5 million *de minimis* threshold.
- *Mislabelling of a cost as an unquantified benefit.* The IA references a 'Benefit to AV software providers as a result of increased demand for their services' (p.10). However, RPC *Case Histories* guidance states that 'if a regulation imposes a cost on business, then that cost should be scored in the BIT', and that 'if these costs are a benefit to businesses, this should not be scored, otherwise the true cost of regulation is not being captured' (pp. 35-36).

- *Risks and wider impacts.* The IA makes only limited reference to risks and wider impacts of the measure. These include the risk that adults and children may be pushed towards the ‘dark web’ or related systems to avoid AV, where they could be exposed to illegal activities and extreme material that they otherwise would never have come into contact with. The IA also recognises numerous other wider impacts, including ‘privacy/fraud concerns linked to inputting ID data into sites and apps’.

Given the potential severity of such risks and wider impacts, the RPC believes that a more thorough consideration of each, and of the potential means to mitigate them, would have been appropriate. The RPC therefore recommends that the Department ensures that it robustly monitors these risks and wider impacts, post-implementation.

- *Monitoring and evaluation plan.* The IA would benefit from including a monitoring and evaluation plan. This would help the Department to ensure that it was gathering the data needed to measure the effectiveness of the measures in achieving the policy’s objectives, assisting future policy development. Specifically, the RPC suggests that the Department should give consideration to the following areas in any future review:
 - As the number of ways to make a payment increases and the complexity of payments in general grows, it may be helpful to recognise the impact that the sum of compliance cost on PSPs could increase;
 - Given the vast quantity of such websites in existence, consideration could be given to whether the blocking 1 to 50 non-compliant sites has been sufficient. It would be helpful to recognise this risk and related cost implication;
 - Whilst recognising that the potential long term detrimental effects (of porn) are unknown, any review would benefit from a discussion of how taking a precautionary approach in regulation, particularly as it relates to children, has proved beneficial
- *Unclearly referenced evidence.* For example, the IA states, ‘In May 2015, 1.4m unique visitors under 18 years old accessed online sites classified as containing pornographic content from their desktop. (p. 3)’ It is not clear what the source of this data is.
- *Rationale and scope.* The IA states that ‘accessing porn can be detrimental to children’s development’, and it identifies the prevention of children accessing porn sites and therefore ‘reducing potential harms to children’, as the key policy objectives. The IA does not, however, provide any clear evidence that

exposure to porn (or indeed broader media with sexual content, such as post-watershed TV programming provided via catch-up services) which is neither 'hard-core' (age verification applies) or 'extreme' (to be blocked by ISPs), is harmful to young people. This is despite such 'soft' pornography ostensibly being within scope of this measure. Clarity on which type of pornography falls within the scope of the measure, and which businesses are therefore affected, would improve the IA. It would also be helpful if the IA were to clarify whether the proposed approach applies to non-commercial as well as to commercial porn, and whether it applies to exchanges between individuals or social networks, such as sexting.

The IA also states that 'there is a relationship between young people watching porn and an array of sexual beliefs' (p.3). It does not explain clearly why this is problematic, and accordingly does not present a clear rationale for government intervention to prevent young people accessing porn. The IA would benefit from providing a clear explanation of the harms associated with "an array of sexual beliefs" – perhaps around attitudes to consent or self-image.

- Interaction with other policies and regulatory developments. The IA does not address interactions with General Data Protection Regulation (GDPR), or with the broader tendency, exemplified by GDPR, to extend extra-territorial regulation over the Internet. It should do so, at least qualitatively
- *Unclear implementation plan.* The Department states that 'age verification technologies/solutions are developing rapidly – we expect there to be a wide range of ways for adults to securely verify that they are over 18' (p.7); there is no substantial explanation within this IA of what form or mechanism AV will take, nor of how the enforcement of the policy via ISPs and PSPs will be undertaken. The Department should clearly explain why it has not been possible to identify an implementation method by this late stage or to set out the BBFC's approach to enforcement in sufficient detail to support a full appraisal. The potential economic costs to consumers, and the potential costs (or benefits) to i) commercial porn providers; ii) age verification platforms; iii) payment services providers; iv) internet service providers; and v) platforms providing a range of services including porn, cannot currently be reliably calculated.

- *The RPC requests that once the measure has been implemented and the mechanism for AV identified, the Department submit an explanatory note. This note should include i) a description of the AV mechanism ii) an indication of the costs to commercial porn providers of using the AV software required to comply with the regulation, and iii) an estimate of the monetised benefit to AV software businesses of the increased demand for their technology which can be directly attributed to the measure. It should also consider in more detail the approach to enforcement by the BBFC and the various second-line enforcement mechanisms via ISPs and PSPs, and work through their impacts systematically.*

Departmental assessment

Equivalent annual net direct cost to business (EANDCB)	£0.8 million
Business net present value	-£6.89 million
Overall net present value	-£45.19 million

RPC assessment

Classification	To be determined once the framework rules for the current parliament are set
Small and micro business assessment	Sufficient

Regulatory Policy Committee