

BBFC Response - Audiovisual Media Services: Consultation Document

1. Introduction

1.1 The BBFC is the independent regulator of film and video in the United Kingdom and was designated the Age-verification regulator under Part 3 of the Digital Economy Act (DEA) in February 2018. The BBFC's responsibilities under this Act include ensuring that online commercial pornography services carry age-verification controls to prevent children accessing harmful content. The Act also ensures that online pornographic services do not contain 'extreme pornography' as defined under UK law. The BBFC is also the independent regulator, on a voluntary, best-practice basis, of content delivered via the UK's four mobile networks (EE, O2, Three and Vodafone).

1.2 The BBFC operates a transparent, trusted classification regime based on years of expertise and published Classification Guidelines. The BBFC conducts regular large scale public consultations to ensure that the standards enshrined in its Guidelines reflect public opinion. The BBFC's primary aim is to protect children and other vulnerable groups from harm through classification decisions which are legally enforceable and to empower consumers, particularly parents and children, through content information and education, enabling families in particular to choose content well, wherever, whenever and however they view it.

1.3 In response to public demand for the same age ratings online and offline, since 2008 the BBFC has worked with on demand services to provide trusted age ratings for video content available for download and streaming online. Some of these platforms also provide parental controls, allowing parents to make available to their children only content with an appropriate age rating for them. The BBFC's work in this area has gained international support and recognition. For example, the BBFC was charged by the European Commission to partner in developing a ratings tool for User Generated Content and we continue to work alongside international regulators to develop tools to better protect children online.

2. BBFC Classification of content online and offline

2.1 The BBFC classifies films, videos and online content according to the content standards set out in the Classification Guidelines with age ratings ranging from 'U' for Universal to 'R18'.¹ The BBFC's Classification Guidelines are informed by public consultation as well as expert advice, the BBFC's own experience and legal requirements. The BBFC also publishes "ratings info" which gives a detailed breakdown of the issues that result in a particular classification, as well as other issues likely to be of relevance to viewers.

2.2 The BBFC's extensive research into public opinion ensures that classification decisions reflect public sensibilities and expectations as these change over time and they consequently enjoy high (over 90%) levels of trust. The BBFC concluded its fifth large-scale consultation in 2018 and new updated Classification Guidelines were published in January 2019. As with previous Guidelines consultations, the BBFC consulted over 10,000 members of the UK public on their views and viewing habits, including perceptions of depictions of sexual violence and discrimination, the means of accessing content online and the value of age ratings and classification when choosing what to view. The consultation involved both qualitative and quantitative research, involving adults and teenagers across the UK.

2.3 The 2018 consultation demonstrates that the public agrees with the BBFC's classification decisions more than 90% of the time (*Bernice Hardie and Goldstone Perl, 2018*). It also found demand for age classification has never been higher, with 97% of people saying they benefit from age ratings being in place. Since the last 2013 consultation, there has been an increase in the proportion of parents saying they check age ratings all

¹ Latest 2019 Classification Guidelines and consultation results to be found here:
https://bbfc.co.uk/sites/default/files/attachments/BBFC%20Guidelines_2019.pdf.
https://bbfc.co.uk/sites/default/files/attachments/Classification_Guidelines_Public_Consultation_2019.pdf

or most of the time for their children's film viewing: 87% checking for under 12 year olds (up 4% from 2013) and 78% checking for 12-14 year olds (up from 71% in 2013).

2.4 The need for the same offline standards to apply online has been a recurring theme in BBFC consultations. In 2018, 91% of people (and 95% of teenagers) want consistent age ratings that they recognise from the cinema and DVD to apply to content accessed through streaming services such as Netflix and Amazon.

3. Questions on implementation – Protection of Minors

3.1 *Question 1: Do you agree with our proposed approach to amend s.368E of the Communications Act 2003 to align the protection of minor requirements for linear and on-demand?*

BBFC response: a. Yes - assuming the current linkage remains to BBFC classifications.

3.1.1 Section 368E of the Communications Act sets out the definition for prohibited material and specially restricted material for on-demand programme services. These definitions directly relate to material that the BBFC would refuse to classify or would classify as 'R18'.

3.1.2 The BBFC agrees that there will need to be an amendment to s368E(5)(c) in order to align Video on Demand content (VOD) to the watershed in the Ofcom Broadcasting Code. Our understanding is that the R18 and prohibited material definitions will remain unchanged in s368E. The Ofcom Broadcasting Code also references BBFC classifications for 15 and 18 in relation to the watershed and we would support this alignment to other mechanisms for VOD that achieve the same effect as the watershed.²

3.1.3 The BBFC believes that it is important to recognise the need for consistent ratings to judge harmful content and we agree with Ofcom's decision to use BBFC classifications which are also currently recognised in the Communications Act. As set out above, the BBFC's more granular classifications are valued and trusted by the UK public and are the result of extensive public consultation.

² The Ofcom Broadcasting Code states:

1.22 No film refused classification by the British Board of Film Classification (BBFC) may be broadcast, unless it has subsequently been classified or the BBFC has confirmed that it would not be rejected according to the standards currently operating. Also, no film cut as a condition of classification by the BBFC may be transmitted in a version which includes the cut material unless:

- the BBFC has confirmed that the material was cut to allow the film to pass at a lower category; or
- the BBFC has confirmed that the film would not be subject to compulsory cuts according to the standards currently operating.

1.23 BBFC 18-rated films or their equivalent must not be broadcast before 2100, on any service (except behind mandatory daytime protection), and even then they may be unsuitable for broadcast at that time.

1.24 Provided that mandatory daytime protection is in place pre-2100 and post-0530 (or pre-2000 and post 0530 for up to BBFC 15-rated films or their equivalent on premium subscription film services), programmes that are unsuitable for 14 www.ofcom.org.uk children that would usually be scheduled after the watershed, and films up to BBFC 18-rated or equivalent, may be broadcast on television at any time of day. Clear information must be provided with programme and film content that will assist adults to assess its suitability for children, and the mandatory daytime protection which is in place must be clearly explained to all viewers. When not using mandatory daytime protection, broadcasters must comply with Ofcom's rules on scheduling and the watershed (see Rules 1.1 to 1.7)

1.25 Pay per view services may broadcast up to BBFC 18-rated films or their equivalent, at any time of day provided that mandatory daytime protection is in place pre-2100 and post-0530. In addition:

- information must be provided about programme content that will assist adults to assess its suitability for children;
- there must be a detailed billing system for subscribers which clearly itemises all viewing including viewing times and dates; and
- those security systems which are in place to protect children must be clearly explained to all subscribers. (See meaning of "mandatory daytime protection" above.)

1.26 BBFC R18-rated films must not be broadcast.

3.1.4 BBFC Recommendation

The BBFC recommends that the alignment between the Ofcom Broadcasting Code requirements for linear broadcasters and the Communications Act requirements should include the current references to BBFC age classifications. These classifications can then be linked to parental controls, affording parents more information and choice, in support of the watershed.

3.2 Question 2 : Noting that Recital 19 envisages that a system of that viewers should be provided with sufficient information regarding the nature of the content, should be equally applicable to both video-on-demand and linear services. Do you consider that Ofcom updating the relevant sections of the Broadcasting Code would be enough to sufficiently meet this requirement?

BBFC response: b. No

As set out below, BBFC believes that the Government should continue to support the protections for minors which are provided by our granular age ratings supported by additional content information for parents which can be linked to parental controls.

3.3 Question 3: If no, what would be your preferred way of introducing a new requirement for ensuring that viewers have sufficient information about the nature of content on video-on-demand catalogues? Could you indicate from the following: a. Using acoustic warning b. Content descriptors c. Visual symbols d. Age-ratings e. Other means (please specify)

BBFC response: b & c & d – BBFC believes that the Government should explicitly recommend the VOD industry adopts BBFC symbols, age ratings and ratings info.

3. 4. Question 4: Should the measures above use standardised system of content descriptors or age-ratings used for broadcast and/or video-on-demand?

3.4.1 Existing BBFC Age Ratings for Video On Demand.

The BBFC already provides a well known and trusted system for rating VOD with age ratings, visual symbols, content descriptors and the ability to link to parental controls. Indeed, the BBFC welcomes the Government's recognition in the Online Harms White Paper of the BBFC's clear content standards based on our evaluation of likely harm which are set out in our Classification Guidelines. Reflecting the level of trust and the effectiveness of these age ratings the Government acknowledges:

*"The designated classification authorities for offline content, the BBFC and the Video Standards Council (VSC), have clear standards based on their evaluation of likely harm and use these to allocate BBFC or PEGI age suitability ratings to inform viewing decisions and protect children and vulnerable adults. These age ratings are applied voluntarily to online content by some publishers and platforms. The new regulatory framework is not intended to impact the existing classification of offline and online content by BBFC and VSC."*³

3.4.2 Since 2008, the BBFC has been working in partnership with the home entertainment industry and others to bring offline regulatory protections online. The BBFC's industry partners in the online space include the home entertainment and music industry and online platforms such as Amazon Prime, Netflix, Google and Sky Store. However, the BBFC recognises that currently there is insufficient coverage for BBFC ratings on a number of VOD platforms and believes the new requirements in the revised AVMSD provide an opportunity to secure greater consistency of approach across all VOD platforms with application of BBFC ratings linked to parental controls.

³ Paragraph 7.50, page 76 Online Harms White Paper

3.4.3 New best practice guidelines for Video On Demand.

Research by the BBFC and the Video Standards Council Rating Board (VSC) published in March 2019 revealed that almost 80% of parents are concerned about children seeing inappropriate content on video on demand or online games platforms. The research also shows that 90% of parents believe that it is important to display age ratings when downloading or streaming a film online, and 92% of parents think it's important for video on demand platforms to show the same type of age ratings they would expect at the cinema or on DVD and Blu-ray – confirmed by 94% of parents saying it's important to have consistent ratings across all video on demand platforms, rather than a variety of bespoke ratings systems.

3.4.4 In response to this demand and with the support of the Department for Digital, Culture, Media and Sport, the BBFC and the VSC published a joint set of Best Practice Guidelines to help online platforms work towards greater and more consistent use of trusted age ratings online. This includes recommending the use of consistent and more comprehensive use of BBFC age labelling symbols across all VOD services including additional ratings info and mapping parental controls to BBFC age ratings. The voluntary Guidelines are aimed at VOD services offering video content to UK consumers via subscription, purchase and rental, and could also be extended to pure catch-up TV services like iPlayer, ITV Hub, All4, My 5 and UKTV Player.

3.4.5 The recommended BBFC/VSC Best Practice Guidelines around voluntary age labelling are set out below:

- A consistent set of BBFC age labelling should be used across all VOD services and a consistent set of PEGI labelling should be used across all online games services
- Services should work towards full coverage of BBFC age ratings across VOD content, and PEGI ratings for video games
- Ratings should always be represented by the formal BBFC/PEGI classification symbols
- Age labels must be easily understandable for the public and reflect the expectations of UK audiences
- Additional ratings info (for example, 'drug misuse, discrimination') should be used alongside the age rating wherever available
- Age ratings should always be displayed and easy to find before the call to action (the prompt to transact, download, stream, play or view)
- Although all titles should carry a best practice age rating, any that don't should be clearly labelled 'Not Rated', with a policy of restricting such content to over 18s (unless the content is clearly children's programming)
- Services should have arrangements in place to ensure that content has UK age labelling before it is made available to the public
- Details on the age labelling and policies used by services should be made accessible across all platforms on which each service operates
- Parental controls should be mapped to BBFC age ratings across VOD content, and PEGI ratings for video games. Users should be able to easily search for age appropriate VOD content and video games

3.4.6 BBFC and Netflix Pilot

The BBFC is continuing to develop innovative ways to make classification easier for industry to ensure that more online video content is made available with a trusted age rating. In line with this ambition, the BBFC and Netflix have also committed to a self-ratings pilot which will see the online streaming service move towards in-house classification using BBFC age ratings, under licence. Netflix will produce BBFC age ratings for content using a manual tagging system along with an automated rating algorithm, with the BBFC taking up an auditing role. Netflix and the BBFC will work together to ensure Netflix's classification process produces ratings which are consistent with the BBFC's Classification Guidelines for the UK.

The goal is to have 100% coverage of BBFC age ratings across the platform which will also lead to more effective parental controls for UK audiences. The BBFC anticipates that from November 2019, Netflix content for UK consumers will start to use the new BBFC age ratings symbols set out below in para 3.4.7.

The BBFC will continue to look at how we can ensure more consistent use of our age ratings and advice online. We believe that the BBFC system of classification meets the key criteria for child safety online and the Government needs to continue to actively ask industry to implement consistent age ratings online. Supporting this initiative, the then Digital Minister Margot James stated at the launch of the best practice guidelines and the BBFC-Netflix pilot:

"Our ambition is for the UK to be the safest place to be online, which means having age ratings parents know and trust applied to all online films and video games. I welcome the innovative collaboration announced today by Netflix and the BBFC, but more needs to be done."

3.4.7 New BBFC classification symbols.

To support this project and promote the use of BBFC classifications online, in October the BBFC is launching new symbols (see below in contrast to old symbols). These new symbols are designed to work as effectively across digital screens and devices as they do in cinemas and on DVD packaging. The purpose behind the redesign is to make the colour progression of the classification symbols more logical than at present and to ensure the symbols can be displayed more effectively in online environments, where the existing BBFC 'watermarking' features make the symbols unclear and difficult to display.

Current symbols in top column; new symbols below.



3.4.8 Government Approach with regard to standardised content information in response to AVMSD for VOD and broadcast content.

As the Government states in the consultation, the 2018 Directive indicates that "media service providers should provide viewers with sufficient information about the content that may impair minors' physical, mental or moral development" (paragraph 33) and indicates that there is no firm position on the best approach.

3.4.9. It would be very difficult to adopt a standardised approach to both broadcast and VOD content. Unlike VOD content where the BBFC already has a substantial presence, broadcast media lacks the same ability to provide more granular age ratings and detailed advice for parents. The BBFC ratings are available for a proportion of broadcast content, for example, the BBFC has rated much historic content where there has been a demand on physical product eg TV dramas, documentary series and sitcoms. BBFC will have rated virtually every movie that is shown on television and these could all carry BBFC ratings.

3.4.10 However, live content and nearly live content is very difficult to age-rate. In relation to near live content the BBFC has a special scheme for recordings of live events, if they are due to be shown in cinemas immediately after the event. This is called the 'As Live' scheme. If a live event is recorded and then shown in cinemas within seven days of the event taking place, we may issue an 'As Live' classification. We do so on the basis of an assessment of the nature of the event (for example, a known play), information provided by

the distributor (who is required to let us know about any content that might result in an age-restrictive classification) and any age restriction placed on the event itself. Because the BBFC does not view the actual content, we only issue 12A, 15 and 18 classifications under the 'As Live' scheme, as a safeguard, and U and PG are not available.⁴

3.4.11 BBFC Recommendation in response to Question 4 with regard to standardised content descriptors or age ratings for broadcast content and/or VOD content

The BBFC believes that the online initiatives that we have undertaken already make a substantial contribution to online child safety and consumer empowerment and have been welcomed by parents in particular. We would therefore strongly urge the Government to support a more consistent and systematic approach across VOD platforms to adopt the BBFC's standardised system of age ratings, visual symbols and content descriptors which are immediately recognised, understood and trusted by the UK public and can be linked to parental controls. While the volume of broadcast content, and the nature of live or nearly live broadcast, makes a standardised system between VOD and broadcast at the current time difficult, it would be appropriate to continue to encourage adoption of BBFC symbols and rating information on broadcast content alongside VOD.

The BBFC would recommend against attempting to bridge any gap by creating a completely new system based on more basic classification for broadcast content, such as the watershed, which would create consumer confusion and damage existing best practice using BBFC age ratings online.

3.5 Question 5: What would the benefits/obstacles be for introducing a standardised system to such content?

As stated above in response to question 4, the BBFC standardised system for VOD content would bring huge benefits for the protection of minors. The main barrier for a standardised system for broadcast content is the nature of the broadcast and the volume of live or nearly live content on broadcast media. But the BBFC has developed tools whereby ratings can apply to a proportion of this content.

3.6 Question 6. Should the government consider a self- or co-regulatory model for provision of sufficient information to protect minors?

The BBFC has worked on a voluntary basis with VOD platforms and secured significant success for example in relation to the Netflix platform. The BBFC would recommend that the Government first seek to continue to encourage industry to act in the best interests of the protection of minors. If this approach fails to result in a consistent approach with the adoption of BBFC standards across all platforms then a co-regulatory approach would be appropriate and the BBFC could work with VOD providers to ensure a more consistent application of BBFC ratings and parental controls.

4. Questions on implementation – Video Sharing Platforms

4.1 The BBFC has indicated our position with regard to overall regulatory approach to Video-Sharing Platforms (VSPs) in our Online Harms White Paper response which is attached to this submission for ease of reference.

4.2 In view of the new commitment in the revised Directive for VSPs to protect minors from harm, the BBFC recommends consideration of a user generated video content (UGC) tool - You Rate It (YouRI). Rating UGC presents a challenge for platforms and for traditional age rating mechanisms. The existing classification models for cinema, DVD and VOD used by film and video regulators around the world do not scale to meet

⁴ Full details of the As Live scheme can be found on our website here: <http://www.bbfc.co.uk/industry-services/theatrical-ratings/as-live>

the volume of UGC available. There is also increasing pressure for more effective and comprehensive age labelling for UGC services which can in turn be linked to filters. In recognition of the fact that UGC is an increasingly significant source of content online, the BBFC and the Dutch regulator, NICAM, developed You Rate It (YouRI), originally at the request of the EU Commission's CEO Coalition to make the Internet a better place for kids.

4.3 The YouRI tool is not designed to rate professionally produced video content distributed online, but to address the large and growing volume of content published every minute (estimates for YouTube alone are more than 400 hours a minute) without standardised age labelling and advice. It allows the public to make safe viewing choices across a much wider range of content online, and mitigates risks for business offering UGC. It is a simple, easy to use tool that takes less than 90 seconds to complete and can be validated by consumers in much less time. It can be completed by the uploaders, the viewers, or both. It takes cultural and societal differences across territories into account, by producing different ratings for different countries, and has been trialled with the ability to produce trusted localised UK, Dutch, Italian and Irish ratings. Further information can be found at: <http://www.yourateit.eu>.

4.4 YouRI generates ratings that can be linked to parental controls and filters and can therefore be an important tool in child protection and consumer empowerment online. The tool was piloted in Italy by Mediaset with encouraging results: 81% of all videos available on the 16mm.it website received a classification during the pilot period.

Recommendation

4.5 The BBFC is currently looking for larger platform partners to demonstrate how effectively the tool works at scale. The BBFC recommends the Government encourages UGC platforms to pilot this international initiative to bring trusted signposts to video sharing platforms.

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