

Consultation response form

Consultation title	Guidance for service providers publishing pornographic content
Organisation name	Nexus

Your response

Question	Your response
<p>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.</p>	<p>Confidential? – N</p> <p>Nexus agrees with the proposed guidance. The guidance clearly sets out the parameters of Part 5 of the Act and identifies areas that fall outside of the scope of Part 5.</p>
<p>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.</p>	<p>Confidential? – N</p> <p>Nexus agrees with the proposed guidance on AI generated content for the following reason:</p> <ul style="list-style-type: none"> AI generating technology requires a prompt by a user to then create the desired result, meaning that the AI tool is being offered as part of a service. Therefore, the provider of the internet service is the entity with control of making the tool available. This is especially important in the case of AI-generate images of children and child sexual exploitation. <p>We would like to see further guidance on the use of and generation of ‘deepfake’ images, or images or videos that have been digitally manipulated to look like someone else without their consent. A University College London report found that experts rank deepfakes as the most dangerous AI crime threat due to the difficulties</p>

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	<p>surrounding identifying deepfakes and the potential harms¹. The UK Minister of Justice said the use of deepfakes had been increasing in recent years, with a website that virtually strips women naked receiving 38 million hits in the first eight months of 2021². Yoshua Bengio, known as the ‘AI Godfather’, said that “AI-generated pornography is a rapidly growing industry, and many targets are minors... The whole deepfake supply chain should be held accountable, just as they are for malware and child pornography”³.</p>
<p>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.</p>	<p>Confidential? – N</p> <p>Nexus agrees with the guidance in respect of the different types of age assurances and the technology’s differing capabilities.</p>
<p>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.</p>	<p>Confidential? – N</p> <p>Nexus agrees with the proposed criteria for the following reasons:</p> <ul style="list-style-type: none"> • Technical accuracy- It is vital that the age assurance technology is accurate at determining the age of a user. This includes constant and varied testing of the technology. • Robustness- This criterion speaks to the multitude of different technologies and situations where age assurances need to be flexible and bespoke, responding to different technological environments and circumvention tactics. • Reliability- Service providers should be exercising due diligence in selecting and outsourcing age assurance technologies. These systems should be reliably sourced and reproduced.

¹ <https://www.ucl.ac.uk/news/2020/aug/deepfakes-ranked-most-serious-ai-crime-threat>

² <https://www.theguardian.com/society/2023/jun/27/sharing-deepfake-intimate-images-to-be-criminalised-in-england-and-wales>

³ <https://www.independent.co.uk/tech/ai-deepfake-child-abuse-porn-openai-b2500505.html>

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	<ul style="list-style-type: none"> • Fairness- The guidance deals fairly with the concerns of bias, wrongful exclusion, and discrimination. Service users should ensure that they are not preventing adults from accessing legal content, and as such this criterion emphasises the need for age assurance technologies to be tested with diverse backgrounds, needs, and datasets.
<p>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?</p>	<p>Confidential? – N</p> <p>Not applicable to our expertise.</p>
<p>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.</p>	<p>Confidential? – N</p> <p>Nexus agrees with the proposed guidance. We would like to highlight the below research from the Council of Europe on children with disabilities in a digital environment⁴ and the importance of internet accessibility:</p> <ul style="list-style-type: none"> • The digital environment can be an enabler that brings significant ‘added value’ to children with disabilities in terms of the realisation of their rights • Children with disabilities, irrespective of the nature of the impairment, are disproportionately disadvantaged in terms of their ability to access and enjoy the benefits of digital technology. • The children reported that they often cannot access or use many devices, websites and applications readily available to other children. The barriers include, for example: a lack of subtitles on videos for deaf children; the inability to magnify text/images or lack of spoken explanations for children with visual impairments; the absence or limits of adaptations for children with physical impairments; and additional levels of security like the ‘CAPTCHA’, a type of challenge-response test used in computing to determine whether or not the user is human, that creates barriers and

⁴ <https://rm.coe.int/two-clicks-forward-and-one-click-back-report-on-children-with-disabili/168098bd0f>

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	<p>makes it 'hard to get on' for children with intellectual disabilities.</p> <ul style="list-style-type: none"> • Children, disabled or not, have more access to the online world when they are anglophones, or have the ability to speak or read in English.
<p>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?</p>	<p>Confidential? – N</p> <p>The case study illustrates the age assurance journey and how a service user might interact with the technology in order for service providers to make an informed decision on how best to comply with statutory age assurances.</p>
<p>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.</p>	<p>Confidential? – N</p> <p>Nexus agrees with the proposed guidance. Ofcom's guidance is very clear on the requirements for record keeping as well as recommendations for seeking consultation on GDPR and processing personal data. The guidance also provides recommendations for record keeping in the case where a service provider employs a third-party supplier of age assurance technologies.</p>
<p>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.</p>	<p>Confidential? – N</p> <p>Nexus agrees with the proposed approach to assessing compliance. By prioritising the risk of harm and the impact of the content being hosted on a regulated service, Ofcom is taking an approach that prioritises the safety and risk of harm to users, especially children.</p> <p>We would like to note, however, the importance of service providers compliance around the images and text used to advertise their service. Age-inappropriate images can appear on general searches on sites like YouTube, and so we would like further information on assessing compliance for advertising material and ensuring it is also age appropriate.</p>

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<p>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</p>	<p>Confidential? – N</p> <p>Nexus agrees with the Impact Assessment. The assessment clearly states that there may be costing involved in complying with regulatory standards, however, these are the minimum expectations and as such are proportional for small and micro businesses as well as larger businesses. There is also a degree of flexibility codified in the guidance to ensure that service providers are instituting age assurances in the most cost-effective and appropriate way. The age assurances will also have a positive impact on adult service users, who will be able to access content through age verification.</p>
<p>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?</p> <p>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.</p>	<p>Confidential? – N</p> <p>Nexus agrees that the proposed guidance will have positive effects on opportunities to use Welsh.</p>

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