



11 December 2024

Dear Ofcom,

**Re: Consultation on protecting children from online harms**

We would like to thank you for the opportunity to discuss our response to the Protection of Children Codes of Practice consultation last month and to be able to follow-up with this written submission which supplements our initial consultation response in July.

We are aligned with Ofcom's overall regulatory approach and its desired policy outcomes. We deeply care about protecting children from harmful content, while preserving the ability of children and adults to access useful information online. Similarly, we are aligned with the new UK Government's focus on driving economic growth and innovation and providing the legislative and regulatory environment to encourage new companies to grow in the UK. Our concern is that some of Ofcom's prescriptive proposals, especially those targeted solely on large companies because of their size rather than risk profile, runs contrary to these policy objectives.

This follow-up response largely concentrates on obligation SM2 of the draft Codes and the specific content moderation requirements it places on large general search services only. Our understanding, based on the draft Codes, is that large general search services are those with more than 7 million monthly UK users, and Ofcom guidance suggests that there are no more than two search engines in the market that meet this criteria.<sup>1</sup> The draft Code requires these services to ensure that primary priority content ("PPC") does not appear in the search results of children and to ensure that any default setting implemented to achieve this requirement cannot be switched off by child users. All other search services are required to downrank, blur or both downrank and blur PPC (SM1A and SM1B).

There is a real risk that, from a legal perspective, measure SM2 improperly extends beyond the relevant duty in the Act,<sup>2</sup> which requires services to use proportionate systems and processes to "minimise" not "prevent" the risk of children encountering PPC. Measure SM2 undermines

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<sup>1</sup> paragraph 17.53, volume 5.

<sup>2</sup> section 27(3) OSA

the deliberate decision by Parliament (which was repeatedly confirmed by government) not to require search services to “prevent” children from encountering PPC (as is required on U2U services<sup>3</sup>) and would not be appropriate or proportionate in the context of search services, given the purpose of these services and the role they play in allowing people to access information. Despite this, SM2 appears to be designed to achieve the elimination of PPC from search results for child users. Further, as currently framed, the measure has a disproportionate impact on the rights to free speech of adult users who could be incorrectly classified as children and blocked from viewing PPC (or indeed important content, such as suicide prevention sites, which could be incorrectly identified as PPC). The ‘safeguards’ set out in SM2 to protect users’ and interested persons’ rights to freedom of expression fail adequately to achieve that purpose.

Below, we outline our three primary concerns, along with potential negative long-term effects on both the industry and UK users. We have also proposed potential recommendations for Ofcom’s consideration.

## 1. Removing PPC from search results

- We have concerns that the requirement to filter PPC from search results for children in the first part of SM2, particularly as regards self-harm, suicide and eating disorder content [*and when we refer to PPC below, we intend to refer only to these three categories*], could inadvertently restrict users from accessing helpful and informative information. This could be particularly harmful if that user is in a time of crisis and unable to access such resources.
- While it is possible to identify pornographic content using hash-matching and classifiers, we are not aware of any classifiers that can consistently and accurately distinguish between content that is promoting suicide, self-harm or eating disorders, versus content that is directing users to seek help in relation to these behaviours. We are therefore concerned that the consequence of the Code’s obligation, and the likely high error rates in identifying PPC, is that it will lead to over-filtering and unintentional removal of non-harmful content. Critically, it is likely to age-gate under 18s out of informative or help-seeking content, which could run counter to the objectives of protecting children from harm.
- We believe ranking protections offer more effective outcomes than filtering of PPC. Google Search has heavily invested in ranking protections that are designed to uplevel high quality content, such as content directing users to self-help material, and demote low quality content (including harmful or borderline material) for all users, regardless of age. We consider that this allows services to strike the right balance between

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<sup>3</sup> section 10(2)(a) OSA

protecting users from harmful content, but also permitting access to information and free expression.

- Our view that ranking protections deliver more effective outcomes than filtering of PPC aligns with the requirements in the Codes that apply to most search services (SM1A and SM1B). We are therefore concerned that the obligation to eliminate PPC from search results (with no user controls to vary the default settings) is both unjustified and disproportionate, particularly as it applies to only one or two search engines in the market.
- We do however strongly believe that all search engines should invest in a suite of protections that minimise the risk that users encounter PPC. This can include: applying ranking protections for web results and search features, blocking exploration features on sensitive queries, applying automated protections on search predictions, and developing content policies that cover search features.

## 2. SafeSearch locked on

- The second part of SM2 requires large search services to ensure that children can't turn off the default setting relating to filtering of content, such as SafeSearch. As above, this requirement applies only to one or two services in the market, whereas all other search services may allow known children to turn off such features.
- This requirement could defeat the policy intent of protecting users' rights to freedom of expression (which includes their ability to receive information), as users seeking content relating to PPC (whether informative or harmful) could be wrongly excluded from informative material, whether due to their age or due to over-removal of content.
- The only justification given by Ofcom for adding SM2 for large search services only is that these services "*present the greatest risk to children*" (para 17.46, Vol 5) but this assertion is not supported by any evidence and is a flawed assumption. Indeed, as above, our ranking algorithms are designed to uplevel useful information and demote harmful information, making our service safer than smaller riskier search services, which do not adopt the same protections. SM2 may therefore have the perverse effect of driving users to smaller but riskier services, where they are more likely to be exposed to harm. It is therefore difficult to reconcile this conclusion with the requirement on large services to ensure that children cannot turn off SafeSearch, and how such a requirement is effective and proportionate to the policy aim.
- Volume 5 of the Consultation states that "*evidence ... shows that default settings are effective, as users often do not change or move away from the default setting*" (para 17.45, Vol 5). It also says that "*children will be less likely than adults to move away from the default setting...*". This is Ofcom's evidence-base for concluding that there should be no requirement to 'lock on' default settings for children on most services. Ofcom's view appears to be that the proposed measures in SM1A and SM1B (i.e. without filtering or

default locked settings) are sufficient to mitigate the risk of children encountering harmful content, while also minimising impacts on adult users, and the risk of children being shut out from content that is informative. We agree with this conclusion. The evidence-base Ofcom refers to is equally applicable to large services and there is therefore no rational basis (nor does Ofcom provide any evidence) for a different approach to be taken in respect of large services.

- In principle search services do not have a duty under the Act to carry out age assurance. Under the draft Code, large search services are required to implement these measures for *known* children. For search services like Google, which use age assurance, this means SM2 applies in respect of users identified as children via our age assurance methods. There will still be instances where over 18 users are inferred as U18s, but we would still be required to 'lock' their SafeSearch settings. These users would have to verify their age through another method (e.g. selfie, gov ID), to change their settings. This would introduce unnecessary friction for users incorrectly identified as children and constitute a disproportionate interference with their rights to access information. Therefore, we consider there to be no basis for large services to be subject to an additional requirement for safe search settings to be "locked on".

### **3. Obligations based only on size rather than risk**

- Our view is that risk should be assessed individually, not based on size alone, and that size does not equate to risk. Google supports a risk-based regulatory framework where companies determine necessary safety measures based on their individual risk profiles. This approach incentivizes platforms to continually improve and lower their risk assessment scores since companies with lower residual risk scores are demonstrating a commitment to user safety, while those with high residual risk scores would require more stringent measures.
- We consider that Ofcom's current approach in relation to SM2 contradicts this principle. Associating risk solely with platform size disregards individual risk profiles and the effectiveness of existing safety measures. While there is a rational basis for requiring large services to adopt more onerous safety approaches in certain areas (such as governance escalations, language coverage, or internal compliance programmes), where the resources available to services are relevant, the specific obligations related to user safety, such as SM2, should be determined by a company's residual risk score, not solely by its size. As Ofcom itself acknowledges when discussing SM1A and SM1B, "*many general search services of different sizes have established a safe search function*" (see Vol 5, para 17.43) so this is not an area where the level of a service's resources is relevant to the proportionality of the requirement.
- Ofcom's current approach disincentivises continual improvement. Linking risk solely to size discourages large platforms from investing in risk mitigation efforts, as they will always be considered high-risk and subject to the most stringent requirements, regardless of their actual residual risk levels. It could also scope smaller, high risk services out of the most

robust compliance measures. This undermines the incentive for continuous improvement and would create a barrier to meeting the OSA's objectives in the long run. We note that Ofcom's own statement in its recent correspondence with the Secretary of State which acknowledged that "*while they may not have wide reach, the smallest online services, especially those that host or promote the most harmful content, can represent a significant risk to UK citizens*".<sup>4</sup> Further, it could also disincentive smaller companies to continue growing as they would face rigid regulatory requirements irrespective of how low their residual online safety risks would be. This would also run contrary to the UK Government's mandate to encourage regulators to pursue a pro-growth and innovation agenda and

- To the extent that Ofcom intends obligations to be risk-based, they should be tied to a service's risk assessment, such that the obligation only applies to services that are at high residual risk of PPC (rather than based on user counts alone).

For the above reasons, we would urge Ofcom to reconsider the requirements in SM2, and permit all services the ability to use ranking and/or blurring protections as appropriate safeguards to minimising the risk of children encountering PPC. Alternatively, to the extent that Ofcom can justify these requirements, and we would welcome an opportunity to discuss Ofcom's research, we would suggest that the obligations should be applicable only to general search services that are at high residual risk of PPC.

If Ofcom requires any further information in relation to this consultation response, please let us know.

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<sup>4</sup> Letter of 11 September 2024 from Melanie Dawes.