Consultation response form

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

Consultation title	Consultation: Protecting children from harms online
Organisation name	Mega Limited

Your response

Question	Your response
Volume 2: Identifying the services children are using Children's Access Assessments (Section 4).	
Do you agree with our proposals in relation to children's access assessments, in particular the aspects below. Please provide evidence to support your view. 1. Our proposal that service providers should only conclude that children are not normally able to access a service	Confidential? – No MEGA sees real difficulty with Ofcom's proposed approach to the Child Access Assessment, particularly the child user condition. **The proposed approach** Under the proposed approach, Ofcom suggests that only service providers who have highly effective age assurance (**HEAA**) in place are able to conclude that it is not possible for children to access a service. Services which do not use HEAA to prevent children from accessing the service must move on to determine whether the child user

Question	Your response
where they are using highly effective age assurance? 2. Our proposed approach to the child user condition, including our proposed interpretation of "significant number of users who are children" and the factors that service providers consider in assessing whether the child user condition is met? 3. Our proposed approach to the process for children's access assessments?	condition test is met. The child user condition is met if (1) there is a significant number of children who are users of the service and (2) the service is of a kind likely to attract a significant number of users who are children. Factors to consider when assessing whether the child user condition is met are said to include: • Whether a service provides benefits to children; • Whether the content on a service is appealing to children; • Whether the design of a service is appealing to children; • Whether children form a part of a service's business model; and • Evidence from internal and external sources. **The proposed approach is not an adequate framework to assess whether children are likely to access utility services that are E2EE** The proposed approach does not provide a reasonable or practical framework to assess whether children are likely to access pure utility services (that neither generate nor propagate content that may appeal to children) and/or services which offer user control and end-to-end encryption (**E2EE**), like Mega. It only appears to envisage or contemplate user-to-user services that facilitate public information dissemination, such as social media platforms, search and pornography services. These services use functionalities like content recommender systems, algorithms, and artificial intelligence, which increase the likelihood of children being pro-actively exposed to and repeatedly encountering certain types of content (whether harmful or not) even if they did not actively seek it out. **(a) How does Mega operate?** Mega is an E2EE cloud storage and communications service provider, with 300 million registered user accounts in 250 countries and territories, who have uploaded more than 160 billion files. Our brand-by-line is **The Privacy**

Question	Your response
	Company, because we offer E2EE cloud storage and communications services, and privacy is a core value going to the heart of everything we do. Our users value being able to store data in a manner that is not vulnerable to third party attack on our services and which cannot be scraped or stolen by advertisers or other third parties. Some users, such as journalists and minority groups in other countries with oppressive regimes, value added protection from Government surveillance. Files or data uploaded to Mega are encrypted at the user's device and cannot be reviewed or monitored by us (or anyone) unless we or they are provided with an encryption key which is known only to the user and anyone they choose to share it with. However, users can generate unique URLs/links to their stored files which include encryption keys and, when shared, will allow third parties to decrypt, access, view and download the relevant content. A URL can be created by a user to share data publicly (the decryption key being embedded in the URL), but the URL must then be sent via emails or some other online services to reach a large audience. On Mega Chat, a user cannot be messaged by, let alone receive files from, someone who is not in their contacts list, unless they elect to join and participate in a public chat on which they can easily block any user and which they can easily leave at any moment. A user must have another user's email address in order to add them as a contact. The request must be accepted before any message can be exchanged. In addition to these safeguards, Mega Chat does not offer added qualities such as the ability to create a user profile. **(b) Proposed approach is not practical for utility services that are E2EE** Notwithstanding all of the above indicators that clearly show Mega is not a service that would be likely to attract a significant number of users who are children, the proposed approach and factors that Ofcom suggests should be used to assess the child user condition are not practical from the perspective of a utility or E2EE service for the following reasons: - The definition of user-to-user service seems primarily to have been drafted to address social media platforms, but captures a broad category of services. What makes sense from the perspective of a social media platform is unlikely to translate to a service like Mega's. It is impractical to impose the same framework to assess whether children are likely to access a service on pure utility services such as Mega that only marginally fit the definition of a user-to-user service.

Question	Your response
	• Due to E2EE, Mega cannot monitor content without being provided the decryption key in respect of any file, chat or user account. As such, we are unable to assess whether content on Mega appeals to children, nor can we assess whether Mega provides any benefits to children based on the value of such content. • The requirement to provide evidence as part of assessing whether a significant number of children use Mega is technically unfeasible and excessively costly given how Mega operates and its functionalities. • The presumption that an online utility service such as cloud storage is accessible to or accessed by children unless that service invests in HEAA (a dubious measuring stick, and something we doubt in fact exists at this time) simply creates an unreasonable burden on such services, without any clear or evidence-based benefit in terms of the protection of children online. In our view, if a service is not designed/intended to appeal to children, does not target children, and has no reason to believe it has any significant number of children access its site(s), that should be sufficient to dispose of the child user condition.
Volume 3: The causes and impacts of online harm to children **Draft Children's Register of Risk (Section 7)**	
Proposed approach: 4. Do you have any views on Ofcom's assessment of the causes and impacts of online harms? Please provide evidence to support your answer. a. Do you think we have missed anything important in our analysis? 5. Do you have any views about our interpretation of the links between	Confidential? – Y / N

Question	Your response
risk factors and different kinds of content harmful to children? Please provide evidence to support your answer.	
6. Do you have any views on the age groups we recommended for assessing risk by age? Please provide evidence to support your answer.	
7. Do you have any views on our interpretation of non-designated content or our approach to identifying non-designated content? Please provide evidence to support your answer.	
Evidence gathering for future work:	
8. Do you have any evidence relating to kinds of content that increase the risk of harm from Primary Priority, Priority or Non-designated Content, when viewed in combination (to be considered as part of cumulative harm)?	
9. Have you identified risks to children from GenAI content or applications on U2U or Search services?	

Question	Your response
a) Please Provide any information about any risks identified 10. Do you have any specific evidence relevant to our assessment of body image content and depressive content as kinds of non-designated content? Specifically, we are interested in: a) (i) specific examples of body image or depressive content linked to significant harms to children, b. (ii) evidence distinguishing body image or depressive content from existing categories of priority or primary priority content. 11. Do you propose any other category of content that could meet the definition of NDC under the Act at this stage? Please provide evidence to support your answer.	

Draft Guidance on Content Harmful to Children (Section 8)

Question	Your response
12. Do you agree with our proposed approach, including the level of specificity of examples given and the proposal to include contextual information for services to consider? 13. Do you have further evidence that can support the guidance provided on different kinds of content harmful to children? 14. For each of the harms discussed, are there additional categories of content that Ofcom a) should consider to be harmful or b) consider not to be harmful or c) where our current proposals should be reconsidered?	Confidential? – Y / N

Volume 4: How should services assess the risk of online harms?

Governance and Accountability (Section 11)

Question	Your response
15. Do you agree with the proposed governance measures to be included in the Children's Safety Codes? a) Please confirm which proposed measure your views relate to and explain your views and provide any arguments and supporting evidence. b) If you responded to our Illegal Harms Consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response. 16. Do you agree with our assumption that the proposed governance measures for Children's Safety Codes could be implemented through the same process as the equivalent draft Illegal Content Codes?	Confidential? – No MEGA does not agree with Ofcom's uniform approach to the proposed governance measures to be included in the Children's Safety Codes. More particularly, Ofcom is currently proposing that all user-to-user services should name a person accountable to the most senior governance body for compliance with children's safety duties, and additional duties for those services identified as multi-risk including: • Providing written statements of responsibility for senior members who make decisions relating to management of child safety risks; • Implementing a code of conduct that sets standards for employees around protecting children; and • Ensuring staff involved in the design and operational management of the service are sufficiently trained in approach to compliance with children's safety duties. As mentioned above, the definition of user-to-user service captures a broad range of services. It may well be the case that a user-to-user service is unable to rule out the possibility that children access its service, but will nevertheless be in a position where the likelihood of such access is not high. It would be unreasonable to impose a one-size fits all approach to governance which imposes weighty duties on key personnel and employees of pure utility services such as Mega that clearly do not attract children and are only marginally captured under the definition of a user-to-user service. Ofcom's approach should be more nuanced and balanced to take into account the different kinds of services that may be captured.

Children's Risk Assessment Guidance and Children's Risk Profiles' (Section 12)

Question	Your response
17. What do you think about our proposals in relation to the Children's Risk Assessment Guidance? a) Please provide underlying arguments and evidence of efficacy or risks that support your view. 18. What do you think about our proposals in relation to the Children's Risk Profiles for Content Harmful to Children? a) Please provide underlying arguments and evidence of efficacy or risks that support your view. Specifically, we welcome evidence from regulated services on the following: 19. Do you think the four-step risk assessment process and the Children's Risk Profiles are useful models to help services understand the risks that their services pose to children and comply with their child risk assessment obligations under the Act? 20. Are there any specific aspects of the children's risk assessment duties	Confidential? – Y

Question	Your response
that you consider need additional guidance beyond what we have proposed in our draft? 21. Are the Children's Risk Profiles sufficiently clear and do you think the information provided on risk factors will help you understand the risks on your service? a) If you have comments or input related to the links between different kinds of content harmful to children and risk factors, please refer to Volume 3: Causes and Impacts of Harms to Children Online which includes the draft Children's Register of Risks.	

Volume 5 – What should services do to mitigate the risk of online harms
Our proposals for the Children's Safety Codes (Section 13)

| **Proposed measures**

22. Do you agree with our proposed package of measures for the first Children's Safety Codes?

a) If not, please explain why.

Evidence gathering for future work. | Confidential? – Y / N |

Question	Your response
23. Do you currently employ measures or have additional evidence in the areas we have set out for future consideration? a) If so, please provide evidence of the impact, effectiveness and cost of such measures, including any results from trialling or testing of measures. 24. Are there other areas in which we should consider potential future measures for the Children's Safety Codes? a) If so, please explain why and provide supporting evidence.	

Developing the Children's Safety Codes: Our framework (Section 14)	
25. Do you agree with our approach to developing the proposed measures for the Children's Safety Codes? a) If not, please explain why. 26. Do you agree with our approach and proposed changes to the draft Il-legal Content Codes to further protect children and accommodate for poten-tial synergies in how systems and pro-cesses manage both content harmful to children and illegal content? a) Please explain your views. 27. Do you agree that most measures should apply to services that are ei-ther large services or smaller services that present a medium or high level of risk to children? 28. Do you agree with our definition of 'large' and with how we apply this in our recommendations?	Confidential? – Y / N

29. Do you agree with our definition of 'multi-risk' and with how we apply this in our recommendations?	
30. Do you agree with the proposed measures that we recommend for all services, even those that are small and low-risk?	

Age assurance measures (Section 15)

31. Do you agree with our proposal to recommend the use of highly effective age assurance to support Measures AA1-6? Please provide any information or evidence to support your views. a) Are there any cases in which HEAA may not be appropriate and proportionate? b) In this case, are there alternative approaches to age assurance which would be better suited? 32. Do you agree with the scope of the services captured by AA1-6? 33. Do you have any information or evidence on different ways that ser-	Confidential? – No MEGA disagrees with OFCOM's proposal to recommend the use of HEAA to prevent children from encountering harmful content insofar as it may apply to utility services that are unlikely to attract a significant number of children. Ofcom has proposed a criteria to assess whether age assurance is 'highly effective' on the grounds of technical accuracy, robustness, reliability and fairness and has provided a list of age assurance that could be 'highly effective' such as accessing information a bank has on record about a user's age, photo-ID matching, facial age estimation, mobile-network operator age checks, credit card checks and reusable digital identity services. Ofcom's proposal to recommend the use of HEAA is disproportionate and lacks justification considering the way Mega operates (as mentioned above). Implementing HEAA would likely incur significant costs and resources, which is not proportionate with a utility service such as Mega that is unlikely to attract children. A further concern with such an approach is the extent of information it would require a service to collect from users (both adult and children) in the sign up process. As the Privacy Company, we have real concerns with such an invasive approach, particularly as it may pertain to children. In Australia, concern has been raised around children being 'datafied' - see the April 2024 Issues Paper released by the Australian Government for its review of its Online Safety Act which stated:

vices could use highly effective age assurance to meet the outcome that children are prevented from encountering identified PPC, or protected from encountering identified PC under Measures AA3 and AA4, respectively? 34. Do you have any comments on our assessment of the implications of the proposed Measures AA1-6 on children, adults or services? a) Please provide any supporting information or evidence in support of your views. 35. Do you have any information or evidence on other ways that services could consider different age groups when using age assurance to protect children in age groups judged to be at risk of harm from encountering PC?	*There are also concerns that children are increasingly being 'datafied,' with potentially millions of data points collected on their location, interests, activities and moods. In February 2023, the Attorney-General's Department released the Privacy Act Review Report which raised the need to better protect children's privacy online.* This concern would certainly be amplified should the collection of such extensive information be required in order to police access to online services.

Content moderation U2U (Section 16)

36. Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.	Confidential? – No Ofcom's proposed measure that all user-to-user services must "implement content moderation systems and processes designed to swiftly act against content harmful to children" is another example of a standardised approach that is impractical to require from E2EE services. To comply with this proposed measure, Ofcom would require services to review content (via either content moderation tools, human moderators or a combination of both) to determine whether it is content harmful to children and actioning it appropriately, to prevent or protect

| 37. Do you agree with the proposed addition of Measure 4G to the Illegal Content Codes?

a) Please provide any arguments and supporting evidence. | children from encountering it. This is technically unfeasible for Mega given the operation of E2EE – we cannot proactively review any files uploaded by our users unless an encryption key is shared with us.

Notwithstanding that limitation, the use of E2EE is not a barrier to online safety (and, indeed, is a critically important means of enhancing privacy and security online). It is our view that an online service provider using E2EE can be a responsible corporate citizen, enhance online safety, and provide a valuable contribution to the community at large. E2EE is not a barrier to efficiently and promptly taking action as soon as illegal content is identified/reported.

For example, Mega has enforced:

• An easy to access and transparent complaint system for users to report any unlawful, illegal or abuse material stored on or shared through Mega;

• A strict takedown procedure whereby Mega promptly disables public links sharing or containing offending files which are reported to us by users, and terminates the accounts of the relevant users; and

• Implementing the ability for all users to accept or decline an invite to a Mega group chat.

Mega is also actively involved in industry initiatives to combat unlawful activity online and is aware of current industry trends and standards in this regard. For example, Mega actively participates in Lantern, the first cross-platform signal sharing for companies to improve online safety.

The reality is that, even without "content moderation", a service provider can be proactive in other ways to reduce and respond to online harm. Mega therefore recommends taking a flexible approach to content moderation that takes into account different types of user-to-user services including those which are E2EE and utility based. |
| **Search moderation (Section 17)** | |

38. Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views. 39. Are there additional steps that services take to protect children from the harms set out in the Act? a) If so, how effective are they? 40. Regarding Measure SM2, do you agree that it is proportionate to preclude users believed to be a child from turning the safe search settings off? The use of Generative AI (GenAI), see Introduction to Volume 5, to facilitate search is an emerging development, which may include where search services have integrated GenAI into their functionalities, as well as where standalone GenAI services perform search functions. There is currently limited evidence on how the use of GenAI in search services may affect the implementation of the safety measures as set out in this code. We welcome further evidence from stakeholders on the following questions	Confidential? – Y / N

and please provider arguments and evidence to support your views: 41. Do you consider that it is technically feasible to apply the proposed code measures in respect of GenAI functionalities which are likely to perform or be integrated into search functions? 42. What additional search moderation measures might be applicable where GenAI performs or is integrated into search functions?	

User reporting and complaints (Section 18)

43. Do you agree with the proposed user reporting measures to be included in the draft Children's Safety Codes? a) Please confirm which proposed measure your views relate to and explain your views and provide any arguments and supporting evidence. b) If you responded to our Illegal Harms Consultation and this is relevant to your response here, please	Confidential? – No MEGA supports Ofcom's proposed user reporting and complaints measures, including: • Having a complaints process which enable people to make relevant complaints for services likely to be accessed by children; • Having an easy to access and use, and transparent complaints system; • Acknowledging receipt of complaints with indicative timeframe and information on resolution; and • Taking appropriate action in response to each complaint. Mega already implements these measures, which remain a primary focus for us. Mega has zero tolerance for unlawful or improper conduct and is widely commended by both local and international law enforcement agencies

signpost to the relevant parts of your prior response. 44. Do you agree with our proposals to apply each of Measures UR2 (e) and UR3 (b) to all services likely to be accessed by children for all types of complaints? a) Please confirm which proposed measure your views relate to and explain your views and provide any arguments and supporting evidence. b) If you responded to our Illegal Harms Consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response. 45. Do you agree with the inclusion of the proposed changes to Measures UR2 and UR3 in the Illegal Content Codes (Measures 5B and 5C)? a) Please provide any arguments and supporting evidence.	in regards to its compliance and disclosure processes. We regularly publish Transparency Reports which detail the actions we have taken. All these reports, including our most recent for the six months to 30 September 2023 can be viewed at https://mega.io/transparency.

Terms of service and publicly available statements (Section 19)	
46. Do you agree with the proposed Terms of Service / Publicly Available Statements measures to be included in the Children's Safety Codes? a) Please confirm which proposed measures your views relate to and provide any arguments and supporting evidence. b) If you responded to our illegal harms consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response. 47. Can you identify any further characteristics that may improve the clarity and accessibility of terms and statements for children? 48. Do you agree with the proposed addition of Measure 6AA to the Illegal Content Codes? a) Please provide any arguments and supporting evidence.	Confidential? – Y/N

Recommender systems (Section 20)	
49. Do you agree with the proposed recommender systems measures to be included in the Children's Safety Codes? a) Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence. b) If you responded to our illegal harms consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response. 50. Are there any intervention points in the design of recommender systems that we have not considered here that could effectively prevent children from being recommended primary priority content and protect children from encountering priority and non-designated content? 51. Is there any evidence that suggests recommender systems are a risk factor associated with bullying? If so, please provide this in response to	Confidential? – Y/N

Measures RS2 and RS3 proposed in this chapter. 52. We plan to include in our RS2 and RS3, that services limit the prominence of content that we are proposing to be classified as non-designated content (NDC), namely depressive content and body image content. This is subject to our consultation on the classification of these content categories as NDC. Do you agree with this proposal? Please provide the underlying arguments and evidence of the relevance of this content to Measures RS2 and RS3. • Please provide the underlying arguments and evidence of the relevance of this content to Measures RS2 and RS3.	
User support (Section 21)	
53. Do you agree with the proposed user support measures to be included in the Children's Safety Codes?	Confidential? – Y/N

a) Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence. b) If you responded to our Illegal harms consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.	

Search features, functionalities and user support (Section 22)

54. Do you agree with our proposals? Please provide underlying arguments and evidence to support your views. 55. Do you have additional evidence relating to children's use of search services and the impact of search functionalities on children's behaviour? 56. Are there additional steps that you take to protect children from harms as set out in the Act? a) If so, how effective are they? As referenced in the Overview of Codes, Section 13 and Section 17, the use of GenAI to facilitate search is an emerging development and there is	Confidential? – Y / N

currently limited evidence on how the use of GenAI in search services may affect the implementation of the safety measures as set out in this section. We welcome further evidence from stakeholders on the following questions and please provide arguments and evidence to support your views:

57. Do you consider that it is technically feasible to apply the proposed codes measures in respect of GenAI functionalities which are likely to perform or be integrated into search functions? Please provide arguments and evidence to support your views.

Combined Impact Assessment (Section 23)	
58. Do you agree that our package of proposed measures is proportionate, taking into account the impact on children's safety online as well as the implications on different kinds of services?	Confidential? – Y / N
Statutory tests (Section 24)	
59. Do you agree that our proposals, in particular our proposed recommendations for the draft Children's Safety Codes, are appropriate in the light of the matters to which we must have regard? a) If not, please explain why.	Confidential? – No For the reasons outlined above, we do not agree that all of Ofcom's proposals are appropriate. In particular, Ofcom has had inadequate regard to the different kinds of user-to-user services and how the proposals may or may not work for them.
Annexes **Impact Assessments (Annex A14)**	

60. In relation to our equality impact assessment, do you agree that some of our proposals would have a positive impact on certain groups? 61. In relation to our Welsh language assessment, do you agree that our proposals are likely to have positive, or more positive impacts on opportunities to use Welsh and treating Welsh no less favourably than English? a) If you disagree, please explain why, including how you consider these proposals 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.	Confidential? – Y / N

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