

Consultation response form

Please complete this form in full and return via email to AVconsultation@ofcom.org.uk or by post to:

ODPS Rule 11 consultation Standards and Audience Protection Ofcom Riverside House 2A Southwark Bridge Road London SE1 9HA

Consultation title	Consultation: ‘Specially restricted material’ and Age Verification Guidance for Providers of On-Demand Programme Services
Full name	Greg Childs
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Representing (delete as appropriate)	Organisation
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Confidentiality

We ask for your contact details along with your response so that we can engage with you on this consultation. For further information about how Ofcom handles your personal information and your corresponding rights, see [Ofcom’s General Privacy Statement](#).

Your details: We will keep your contact number and email address confidential. Is there anything else you want to keep confidential? Delete as appropriate.	Nothing
Your response: Please indicate how much of your response you want to keep confidential. Delete as appropriate.	None
For confidential responses, can Ofcom publish a reference to the contents of your response?	Yes

Your response

Question	Your response
Question 1: Do you agree with our proposal to revise the Guidance for Rule 11 to state that we will have regard to any BBFC Guidance on the definition of ‘pornographic material’ when assessing whether ODPS material falls within the definition of ‘specially restricted material’?	Confidential? – N While we are encouraged that Ofcom is intending to revise and update the Guidance, we are concerned that this highlights the paucity of the existing and proposed safeguarding frameworks designed to protect Under 18s from harmful online and on-demand content.

We welcome any move to protect children in the digital space, but we suspect that the new Guideline will do little to actually safeguard children from inappropriate content. There is no allowance made in this consultative proposal for adult content that is not pornography.

The consultation initially references content that the BBFC would assign an 18 certificate.

Appendix A1, outlining Section 368E of the Communication Act 2003, opens with “An on-demand service must not contain any specially restricted material unless the material is made available in a manner which secures that persons under the age of 18 will not normally see or hear it.”

It goes on to define “specially restricted material” as not solely pornography. Subsection (5) (c) lists “other material that might seriously impair the physical, mental or moral development of persons under the age of 18.”

However, the consultation document appears to ignore this broader definition of “harm” and restricts its interpretation to content that is designed to create sexual arousal and content that would be restricted as R18.

In addition, the Guidance seems to treat children as a broad group of under 18s. However, the expectations and media literacy of a 16 year-old are clearly very different to those of, say, an 8 year-old.

We would argue that the reference to R18 in Rule 11 should be treated as a bare minimum standard, and that Ofcom’s VOD Guidelines should be brought more into line with the Broadcast Guidelines to take a broader view of age appropriateness. This would also be in line with the Government’s internet safety strategy.

Question 2: Do you agree with our proposal to amend our Rule 11 Guidance to replicate the BBFC's AV Guidance and explain that our assessment of AV solutions will be considered with reference to the BBFC's published list of assessed AV solutions?

Confidential? – N

In the short term, we agree with the proposal to align Rule 11 to the BBFC's guidance and solutions.

However, while we acknowledge that the BBFC has a statutory obligation to police this area, that does not mean that they have all the answers.

For instance, as the use of 'non-human operators' increases, how are those algorithms being monitored for effectiveness (or over zealousness)? And as the VOD landscape continues to evolve, it is likely that the lines will continue to blur around services that are 'competing for the same audience as television'.

We would therefore like to see a commitment within Ofcom's guidance to regularly review the effectiveness of the Guidelines and to actively collaborate with BBFC to ensure their effectiveness in safeguarding children from access to inappropriate content beyond simply pornographic content.

Question 3: Do you have any other comments regarding our proposed amendments to the Rule 11 guidance?

Confidential? – N

As stated in our responses above, we do not think the amendment goes far enough to offer a safeguard for children.

We would like the guidelines to go further than specifying R18 content. We think the rules should be more closely aligned to the Broadcast Guidelines to consider other inappropriate, non-pornographic, content such as violence or content that could encourage imitative behaviour.

Question 4: Do you agree with our assessment of the impact of our proposals on the relevant equality groups? If not, please explain why you do not agree.

Confidential? – N

We do not agree with your assessment of the impact of the proposals.

In note A3.8, you state that your "proposals may have a positive impact on children by



reducing the risk that they might view unsuitable content on ODPS.” The reality is that when it comes to safeguarding children in the on-demand space, the bar is so low that any action would have a positive impact.

While the risks and issues surrounding restricted pornographic content are important (and emotive), this type of content is far from the only type of inappropriate content online.

Therefore, we suggest that these proposals do little more than pay lip-service to addressing the safeguarding issues in the on-demand space, and we would question whether the proposals go far enough to be genuinely effective.

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