

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

PROPOSAL FOR DESIGNATION OF AGE- VERIFICATION REGULATOR

Thursday 1 February 2018

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The Committee consisted of the following Members:

Chair: MR VIRENDRA SHARMA

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| † Adams, Nigel (<i>Lord Commissioner of Her Majesty's Treasury</i>) | † Leigh, Sir Edward (<i>Gainsborough</i>) (Con) |
| † Afriyie, Adam (<i>Windsor</i>) (Con) | † Lewer, Andrew (<i>Northampton South</i>) (Con) |
| † Byrne, Liam (<i>Birmingham, Hodge Hill</i>) (Lab) | † Lynch, Holly (<i>Halifax</i>) (Lab) |
| † Cadbury, Ruth (<i>Brentford and Isleworth</i>) (Lab) | † O'Hara, Brendan (<i>Argyll and Bute</i>) (SNP) |
| † Gaffney, Hugh (<i>Coatbridge, Chryston and Bellshill</i>) (Lab) | † Peacock, Stephanie (<i>Barnsley East</i>) (Lab) |
| † Hammond, Stephen (<i>Wimbledon</i>) (Con) | † Siddiq, Tulip (<i>Hampstead and Kilburn</i>) (Lab) |
| † Huddleston, Nigel (<i>Mid Worcestershire</i>) (Con) | † Smeeth, Ruth (<i>Stoke-on-Trent North</i>) (Lab) |
| † James, Margot (<i>Minister of State, Department for Digital, Culture, Media and Sport</i>) | † Soames, Sir Nicholas (<i>Mid Sussex</i>) (Con) |
| † Knight, Sir Greg (<i>East Yorkshire</i>) (Con) | Peter Stam, <i>Committee Clerk</i> |
| | † attended the Committee |

Fourth Delegated Legislation Committee

Thursday 1 February 2018

[MR VIRENDRA SHARMA *in the Chair*]

Proposal for Designation of Age-verification Regulator

11.30 am

The Minister of State, Department for Digital, Culture, Media and Sport (Margot James): I beg to move,

That the Committee has considered the Proposal for Designation of Age-verification Regulator.

It is a pleasure to serve under your chairmanship, Mr Sharma. The Digital Economy Act 2017 introduced a requirement for commercial providers of online pornography to have robust age-verification controls in place to prevent children and young people under the age of 18 from accessing pornographic material. Section 16 of the Act states that the Secretary of State may designate by notice the age-verification regulator and may specify which functions under the Act the age-verification regulator should hold. The debate will focus on two issues. I am seeking Parliament's approval to designate the British Board of Film Classification as the age-verification regulator and approval for the BBFC to hold in this role specific functions under the Act.

Sir Greg Knight (East Yorkshire) (Con): For the purpose of this measure, where is pornography defined? For example, would the measure prevent a student from downloading a film, say, of "Salome" or "Lady Chatterley's Lover"?

Margot James: The measure before us today deals exclusively with the designation of the BBFC as age-verification regulator and the powers that it will enjoy by exercising that function. It does not deal with the definition of pornography. Although the measure contains a definition within it, it does not deal with that matter. I can come back to that later if my right hon. Friend requires it.

Before considering the specific points related to the debate, I remind the Committee why we introduced the requirement. In the offline world there are strict rules to prevent children accessing adult content, but the same is not true online. A large amount of pornography is available on the internet in the UK, often for free, with little or no protection to ensure that those accessing it are old enough to do so. That is changing the way in which young people understand healthy relationships, sex and consent.

A 2016 report commissioned by the Children's Commissioner and the National Society for the Prevention of Cruelty to Children makes this clear. More than half of the children sampled had been exposed to online pornography by the age of 15. Nearly half of boys thought pornography was realistic and just under half wished to emulate what they had seen. The introduction of a requirement for age-verification controls is a necessary

step towards tackling the issues and contributes to our commitment to making the United Kingdom the safest place in the world to be online.

The BBFC is best placed to carry out the important role of age-verification regulator because it has unparalleled expertise in the area. The BBFC has been classifying films for cinema release since 1912 and video content since 1984. It has established a trusted reputation for making difficult editorial judgments and giving consumers, particularly parents and children, clear information about age-appropriate content. Importantly, the BBFC is currently responsible for classifying adult material for sale online, including judging when content should be rated 18 years and therefore be available for sale only in licensed sex shops. Moreover, the BBFC understands how new technology is changing the way in which people access content. It has been crucial to the development and implementation of the filtering of adult content on mobile networks. It is clear that the BBFC has the breadth of experience and expertise required to undertake the role of age-verification regulator.

In this role, the BBFC will be responsible for identifying non-compliant websites and giving notice to the appropriate persons. Draft regulations setting out the circumstances in which the regulator should consider that pornography has been made available on a commercial basis were published alongside the Act. We expect to lay an updated draft before the House shortly.

The particulars of the proposed designation set out the powers that the BBFC will be designated to carry out the role, namely: the power to request information that it requires to exercise its powers; the power to issue civil proceedings against non-compliant persons; the power to give notice to payment service providers or ancillary service providers to non-compliant persons; the power to direct internet service providers to block access to non-compliant material; and the freedom to exercise its powers proportionately, and in a manner that prioritises child safety online.

In addition, there is an obligation on the BBFC to issue guidance on the age-verification arrangements that it will treat as compliant, and the approach that it will take to ancillary service providers. Following designation, that guidance will be laid before the House for approval. We are confident that, taken together, this approach gives the BBFC a range of powers that will provide a real incentive for pornography providers to comply with the age-verification requirement under the Digital Economy Act.

I am pleased to report that the BBFC has engaged openly and constructively with the Department for Digital, Culture, Media and Sport from the beginning of the process, and has made extensive preparations for the role, including developing the technical expertise and processes that will be necessary. It has undertaken engagement with relevant organisations, including representatives of the adult industry and the age-verification industry. In particular, it has established a charity working group to ensure that its approach is in line with child online safety goals.

In conclusion, we believe that the BBFC has the right attributes and experience to carry out the role of age-verification regulator. It is a highly respected organisation that has unparalleled expertise in classifying content. I have confidence in recommending it to the House as age-verification regulator for online pornography.

11.37 am

Liam Byrne (Birmingham, Hodge Hill) (Lab): It is a privilege to serve under your chairmanship, Mr Sharma—I think it is the first time I have had that honour. I congratulate the Minister on her new role. This is the first time we have faced each other in such a debate, and I am very much looking forward to spending an awful lot more time with her in Committee Rooms as the Data Protection Bill weaves its way through the House of Commons.

At this stage, I would normally preface my remarks with a lacerating attack on how the Government are acquiescing in our place in the world as a cyber also-ran, and I would attack them for their rather desultory position and attitude to delivering a world-class digital trust regime. However, I am very fortunate that this morning the Secretary of State has made the arguments for me. This morning, before the Minister arrived, the Secretary of State launched his new app, “Matt Hancock MP”. It does not require email verification, so people are already posting hardcore pornography on it. When the Minister winds up, she might just tell us whether the age-verification regulator that she has proposed, and that we will approve this morning, will oversee the app of the Secretary of State as well.

I noticed that the main contributors to the app are journalists, although it looks as though Ed Balls has also been on, because someone has posted “Ed Balls”. Those are the only words that have been posted, but it is the second-most favoured comment on the app this morning. For reasons that are not quite clear, when someone signs up to the “Matt Hancock MP” app, the app asks whether it can access that person’s photos. It is not quite clear whether that is an unintended breach of users’ privacy, but perhaps the Minister can tell us her attitude to that when she winds up as well. If people are posting pornography on it, as I am told they are, perhaps she could raise that with the Secretary of State when she returns. In her wind-up remarks, we expect her to tell us whether her regulator will include in its purview the app launched by the Secretary of State for Digital, Culture, Media and Sport this morning.

The second substantive point I wanted to make is a plea to the Minister. This morning she has contributed to the complete mish-mash and muddle that is digital regulation in this country. We already have Ofcom responsible for content regulation, unless it is on a platform such as Facebook or Twitter. We have the Information Commissioner, which is responsible for data protection. We have the Advertising Standards Authority, which is responsible for regulating adverts, but not political adverts. If the Republic of Russia paid for attack ads attacking Brexit mutineers, such as some of the hon. and right hon. Members sat on the Conservative Benches, that is not covered by the ASA. Now we have a fourth regulator to add to the mix: the BBFC. The challenge the Minister has is that so much is now falling through the cracks that she is in no way able to rehearse an argument that we have a digital regulation regime that is fit for the 21st century.

Let me give the Minister advance notice of some of the arguments we need to have during the consideration of the Data Protection Bill. This is a mess, and the Government have to bring forward substantive proposals to clear it up. The challenge she has got this morning is that she is proposing as an age-verification regulator an

organisation that is hopelessly underfunded with no sense of what its scope should be. According to the BBFC’s annual report for 2016, it has £5.4 million in turnover. It has a grand total of 52 employees, and that is not up but down on the number for 2015. It receives no subsidy or budget from the Government. The Minister needs to tell us how much money she will ask for in Commons votes to fund the BBFC to fulfil this important new regulatory role.

Secondly, the question of mission creep is an important one for the Minister to answer. The BBFC said this month at the Free Speech Coalition leadership conference that it sees the powers under the Digital Economy Act as meaning that even social media sites such as Reddit, Twitter and Tumblr would have to eliminate adult content or block all under-18s from using them. If the BBFC’s attitude to Reddit, Twitter and Tumblr is that they need to block content for all under-18s, then “Matt Hancock MP” the app should be included in the purview of the regulator. I know the Minister will set our minds at rest. The question for her is how on earth this regulator with 52 people will ensure that Reddit, Tumblr and Twitter are taking down all adult content or blocking under-18s. We need to hear a concrete plan and some substantive reassurance from her this morning.

We are told that the enforcement of age verification will be undertaken not on a proactive basis, but by people reporting in complaints, yet the whole regime for collective redress has been shot through by the Government in the other place. Parents on their own cannot even get together with consumer organisations such as Which? to bring substantive redress under the terms of the Digital Economy Act.

The BBFC has given some reassurances that it will be able to distinguish between pornography and sex education, but it has not told us how. It claims to have a system for mobile devices that blocks websites with inappropriate content, but in evidence to the Public Bill Committee, the Open Rights Group said that the system is inaccurate, people have to actively choose the websites that are blocked, the websites are not automatically blocked, the websites are often blocked incorrectly and harmful websites are slipping through. We need to have substantial reassurances that the Minister is absolutely confident that the BBFC has the powers, resources, methodology, people and a strategy for fulfilling the terms of the statutory instrument. I would like some reassurance on those points, but crucially we all want to hear whether “Matt Hancock MP” the app will be included under the terms of the regulator.

11.44 am

Sir Nicholas Soames (Mid Sussex) (Con): The Minister has been an inspiration to me for all her time in Parliament, not least because she persuaded me how pathetic I was not to get on Twitter in the first place. To pick up the point of the right hon. Member for Birmingham, Hodge Hill, which is a very fair one, I saw the Secretary of State’s new app this morning and it aroused envy in me.

In answering the well-made point of the right hon. Gentleman, I want the Minister to make clear that the Nicholas Soames app, which will go live imminently, will be subject to the same strictures that he wants and that I will not be besieged with unsuitable posts.

11.45 am

Brendan O'Hara (Argyll and Bute) (SNP): I welcome the Minister to her place. If nothing else, to be the person remembered for persuading the right hon. Member for Mid Sussex to get on Twitter puts her in the pantheon of the greats of this House. Unlike the right hon. Member for Birmingham, Hodge Hill, I have not had the delight of visiting the “Matt Hancock MP” app, but I certainly have my weekend’s relaxation sorted out. I look forward to the experience.

I share many of the concerns that the right hon. Gentleman expressed around the BBFC’s funding, resources and ability to do the job that it will be charged with doing. Broadly, the Scottish National party supports this age-verification measure, but we are aware that it is not a silver bullet. It has to be part of a much wider package around education and broader internet child safety. We have concerns, which we have expressed in the past, about data protection and individual privacy issues. Privacy, anonymity and proportionality at all times are very important.

We would like to know more about the software that is intended to be used. Are there mechanisms for the Government to report on improvements to the age-verification software as it progresses? How confident are they that the software is robust enough to deter a moderately tech-savvy teenager from getting round its security portals? What safeguards are there to ensure that the security is sufficiently stringent that the software cannot be hacked, leaked and subsequently exploited?

We are broadly supportive but we have questions about the software and about whether the BBFC has the wherewithal to deliver what the Government seek it to deliver.

The Chair: I notice that nine hon. Members were searching Twitter.

11.48 am

Margot James: I thank hon. Members for their contributions, and I thank the hon. Member for Argyll and Bute and the right hon. Member for Birmingham, Hodge Hill for their warm welcome. I, too, look forward to many more hours of debating with them and their colleagues.

With regard to the app of my right hon. Friend the Secretary of State, I am afraid that I have been too busy working this morning to have been on it. Since it has just been launched, I have no doubt that he will have time to refine it in forthcoming days.

Sir Nicholas Soames: Will the Minister give way?

Margot James: Just before I give way, I will deal with the substantive point raised by the right hon. Member for Birmingham, Hodge Hill about whether such apps will come under the purview of the regulation. Hon. Members should bear in mind the important point that the regulation seeks to regulate age verification with regard to pornography that is made available for commercial use.

Sir Nicholas Soames: I want to help the Minister in that I have been on the app and, contrary to what the right hon. Gentleman said, it is truly magnificent. It is a road down which we must all go.

Margot James: I thank my right hon. Friend for confirming what I suspected. My right hon. Friend the Secretary of State is extremely able in the digital world, and I am sure that what he has put out is of very high quality.

I wish to respond to some of the criticisms and questions from the debate. First and foremost, over the choice of the BBFC—

Liam Byrne: Tom Bateman, a political editor with BBC politics, tells us he denied the app access to his photos and yet it uploaded pictures anyway, so it is not clear to me how the Secretary of State has been able to produce this app in a way that is violating the country’s privacy laws.

The Chair: Order. If we could keep to the legislation—

Margot James: Thank you, Mr Sharma, I shall certainly keep to the point of the debate.

The right hon. Member for Birmingham, Hodge Hill asked earlier about the choice of the BBFC, whether it is best placed to carry out this role and whether we were adding to the plethora of agencies to which he referred. Not that this is the subject of the debate, but the roles of Ofcom and the Information Commissioner are distinct and clear. His criticism that we are adding yet another I fear is misplaced, because the BBFC has been in existence for 100 years. We are not adding anything. We are merely going to the organisation with the most expertise to do the job required. It has been responsible for classifying adult material for sale offline for many years, it has a trusted reputation in defining age-appropriate content, and it has played a key role in the development and implementation of the filtering of adult content on mobile networks. Indeed, its core mission is child protection.

The right hon. Gentleman also asked about resources, as did I when I took on this brief—it is an important question. One of the benefits is that we are adding a responsibility to an organisation that is already well placed to inherit the task. We are enabling a budget of just under £1 million for the set-up costs of the BBFC engaging in the age verification task. During the first year it will be given approximately £800,000 in addition for its running costs. This is a new policy and we will certainly keep it under review, and that goes for the resources we allocate it as well as the progress of the implementation.

On powers and responsibilities, the regulator is required to publish guidance on the age verification arrangements that it will treat as compliant. Hon. Members will be able to see that guidance shortly. The right hon. Gentleman asked about specific social media powers, but with the powers across all online pornographic content the BBFC will be able to issue civil proceedings against non-compliant persons. Importantly, it will be able to give notice to payment service providers. The BBFC has already had discussions with Visa and Mastercard, which were very concerned for their brands not to be associated with any non-compliant sites. That is a good sign. Finally, the BBFC is able to direct internet service providers wherever they are in the world to block access to non-compliant websites. Those powers are strong but, as with resources, we will keep the new legislation under review.

I thank the members of the Committee for their contributions to this important debate. Age verification for online pornography is an important new regime. I agree with the hon. Member for Argyll and Bute that it is one aspect of what we need to do about education and child safety online, but it is nevertheless important. As has been clearly set out today, the new policy is complex and requires expertise and judgment. The BBFC's track record in classifying films and content offline demonstrates that it has the attributes required to undertake

the work online. It is clearly best placed to take on the role, and the powers that we propose to give it will allow it to carry out the role effectively and, in doing so, to make the internet a safer place for children. I thank the Committee for its time this morning.

Question put and agreed to.

11.55 am

Committee rose.

