

Consolidated Industry Codes of Practice for the Online Industry (Class 1C and Class 2 Material)
Expert Stakeholder Roundtable
13 November 2024, 10.00am- 11:30 am AEDT Summary of Discussion

Summary of discussion

Acknowledgement of Country

Formalities (welcome, introductions, housekeeping)

Introduction of topic / overview of the Codes with regards to the relevant issues

The discussion consisted of open Q&A and discussion prompted by questions provided in advance (from the Discussion Paper accompanying the draft codes published for consultation).

Open Q&A

- Open questions on the draft codes and codes development process.

Discussion questions

- Do you think the Codes strike an appropriate balance between user privacy, data security, freedom of expression and online safety, particularly around services used for private communication and storage of material such as file storage services?
- Should providers of most relevant electronic services that allow users under 18 (such as email and private messaging services) be required to scan all Australian user's communications and messages to detect and remove lawful Class 1C and Class 2 materials?
- It is the industry's view that age assurance should be both effective, privacy preserving and data minimising. Therefore, the question of when and where age assurance should take place is inextricably linked with the question of how age assurance should be implemented:
 - Where should age assurance measures be introduced in relation to these Codes? Should for example, all users of Tier 1 and Tier 2 equipment be subject to age assurance measures? Should users of email, messaging services and other types of private communication services and file storage services be subject to age assurance or other kinds of measures that restrict access to content?
 - What kinds of information gathering requirements and processes should be implemented by relevant industry participants to conduct age assurance?
- Should all Australian end-users who engage with online devices or services generally be required to undergo age assurance processes, or only those Australian end-users who wish to access high impact services (such as, for example, services that have the predominant purpose of high impact pornography)?

Noted from general discussion under Chatham House Rule, roundtable participants made the following discussion contributions:

International precedent

- Participants questioned which, if any, international models the draft codes had drawn from.
- Participants questioned whether the codes were based on the UK safety codes and noted that these codes had not been in place for a time period that allowed Australia to make an assessment of their efficacy.
- Concerns were registered about why international models that are unproven are being drawn on as a model. Some participants noted it would be prudent to review the efficacy of other models before using them as a basis for Australia's approach.

- Participants shared a research paper for reference - [A critical assessment of statutory age verification and its enforcement in the UK](#).

Approach to risk assessment and likelihood of a minor accessing a service

- Some participants noted they were pleased to see an estimation on the likelihood of a service being accessed by minors as part of the risk assessment process.
- Participants also noted that in the UK, industry has needed more detailed guidance on how to measure a 'significant number' of minors likely to access a service as this is somewhat subjective. The UK office supplemented initial guidance with more detail to further support implementation.
- Participants shared the UK guidance on the likelihood of a child to access a service for reference - <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/likely-to-be-accessed-by-children/#threshold>
- It was noted Australia might like to examine this more closely and keep it in mind in relation to the Class 2 codes.

Data minimisation, age assurance, and privacy

- Participants asked whether the codes would take a data minimisation approach to protecting children's privacy.
- Industry associations noted that there are trade-offs to balance between privacy preserving approaches such as data minimisation and the data collection required for age assurance.
- Participants asked how privacy settings were managed for phase one codes and having strong privacy settings for minors.
- Industry associations noted that there was consideration of privacy settings but it was also considered that was more squarely in the remit of privacy and avoided overlap with intended children's privacy code.
- Discussion further noted the potential overlap of safety settings and privacy settings.
- Participants noted that in the framing of the UK safety codes - age assurance is mentioned but it is contextually grounded in consideration of handling of children's data and acknowledge that age assurance is not necessary or appropriate in a lot of spaces if a product is deemed to be safe or low risk.
- Associations noted that there is a scale of age assurance. In some cases, ages can be inferred. For example, email is often a legacy service and providers can know a minimum age simply by how long you have held an account (i.e. some accounts held for 18+ years).
- Some participants questioned whether age verification could be done in a privacy preserving fashion and whether the age verification tech industry were representing the technologies as more mature than they are presently due to a commercial interest.
- Some participants questioned the intent of the codes and whether the underlying goal was to introduce digital ID to a broader population.
- Participants noted that in the other international jurisdictions, age assurance technologies have been circumvented by use of VPNs.
- Associations noted this is a whole of ecosystem approach which has not been fully attempted in any other jurisdiction.
- Some participants noted that they saw the codes as an overreach by the Government into private communication of individual citizens and that they considered this level of regulation of legal content to be quasi-criminalising it.
- Participants asked to what extent there will be publicly accessible privacy impact assessments weighing up the privacy impacts of the codes available.
- Associations noted that the codes include guidance on conducting privacy impact assessments and we would expect there to be more fulsome consideration of age assurance privacy impacts in the government's trial of age assurance technology.

Definitions and the classification scheme

- Participants noted the challenge of the codes' scope as the legislation doesn't directly define what pornography is.

- Some participants noted they were broadly supportive of a number of the approaches taken in the codes but noted concerns about class 2B material and particularly the concept of 'themes'.
- Some participants noted they were concerned it could inadvertently capture support materials aimed at education or support for different age groups around suicide or self harm.
- Discussion further noted potential unintended consequences of accessing support materials because of family context, such as support services for familial abuse.
- Associations noted the codes aim to avoid this by focusing on material that 'encourages' rather than simply mentioned these themes.
- Associations further noted there were challenges and tradeoffs in how to broadly capture this material - noting there could be some over capture in the process.
- Some participants questioned how the national classification scheme is used in the codes considering that X18+ material does not use the impact test in the way that R18+ and under does. Discussion further questioned how fetish material would be captured.
- Discussion noted that different parts of the law have a different definition of what constitutes a child, which adds complexity.
- Some participants noted they were concerned with over capture into sexual educational or sexual health materials.

Harm minimisation and potential impact on different demographics

- Participants noted that a harm minimisation approach is essential and should be evidence based to clearly connect with reduction of potential harm.
- Some participants noted that the harms connected to pornography are correlational and not causal and urged caution at merging these two relationships.
- Participants asked if there had been close assessment of how the codes would impact different demographics e.g people from different racial backgrounds, socio-economic backgrounds, sexual orientations or from regional vs. metro areas.
- Some participants questioned if there had been close consideration of cultural contexts. Discussion noted how some people from certain backgrounds rely on the internet to build connections and how barriers to access could affect them. Some participants further noted that barriers to access were a punitive approach to safety.
- Some participants noted that without close consideration on outsized impacts on vulnerable groups there could be specific risks and ill effects and provided the example of robodebt.

Potential impact on sex workers

- Some participants noted they did not support the codes applying to advertising due to potential impact on sex workers who use advertising. They considered this slippage from a policy goal of regulating high impact material to the advertising that material that was not high impact in and of itself.
- Some participants noted they believed the codes would have a severe impact on and even end the Australian porn industry.
- They noted the impact would be felt most greatly by small and independent adult content creators.
- They stressed this could have a severe financial and wellbeing impact on this demographic.
- They noted it would be unlikely that Australia would no longer be a consumer of porn, but it could have a significant impact on the local industry.

Age appropriate experiences

- Participants noted that the codes should consider the different maturity and capacities of different age groups. Discussion noted that from a developmental perspective, the ability to make their own decisions is important for minors as they mature.
- Discussion noted the challenges of delivering age appropriate experiences and also observing data minimisation as age-appropriate experiences require collection of data to estimate age.
- Associations noted that the ability of any child to engage with a specific form of content will be contextually dependent on the individual child. This makes it difficult to group and make decisions about what is age appropriate content for different developmental age groups. At

this stage, there are limitations to how nuanced approaches can be. There are many factors to weigh up, including privacy preservation.

Next steps in consultation process

- Associations thanked participants for their time and reminded the group of the upcoming submission deadline.
- Associations noted that due to time constraints, they would likely provide grouped feedback on the recurring themes across the submissions and would not be able to provide individualised responses as was the case with submission to the phase one code process.