Digital Economy Bill - Issues with effectiveness and proportionality

At the Child Online Safety Seminar on 26th January, David Austin, CEO of the BBFC said he has “6 characteristics the regulation must have”, and I have a major issue with the first two, as I don’t think they are compatible.

1) Effective – it must achieve the child protection goal that the legislation is designed to achieve.
2) Proportionate – we would pursue the big commercial providers where we know that children go.

He went on to say: “If we target the top 50 websites and then some are blocked, then that top 50 is going to change. So the plan at the moment is, every quarter we’ll be following what’s happening in terms of which websites, which apps are becoming more popular, which are disappearing, so it is a moving target. We will follow that moving target. ”

in the same meeting said Sky currently block 4,653,074 pornographic URLs.

Effective – What is the Child Protection Goal?

- Manifesto Pledge – “We will stop children’s exposure to harmful sexualised content online, by requiring age verification for access to all sites containing pornographic material” – watered down to commercial sites, but we can just about live with that.
- Not in the bill, but the Minister has mentioned several times in the commons that the Bill focusses on those who stumble across content rather than seek it out

How do children come across porn on the internet today?

Seeking
- Types in a brand they may recognise – Pornhub.com – Effective – But this is seeking, not stumbling.
- Googles a porn term – NOT Effective unless the majority of sites are compliant or enforced against

Stumbling
- Googles a non-porn term like “cock” or “pussy” when looking for pictures of animals for their homework – NOT Effective unless...ditto
- Googles something, but misspells their search – NOT Effective unless..ditto

Note - On all the googling scenarios, Google Image Search will always show porn unless proportionality is ditched. Compliant sites will not appear in Google Image Search as Google will have no images to show them, as they can’t scrape images from a site behind an AV wall.

- Older child sends younger child a link to their phone of porn, or a sexual image over an app like snapchat, whatsapp, Skype etc. – NOT Effective unless these apps are in scope and are required to introduce AV
- Someone they follow on Twitter posts porn in in their Twitter feed, or indeed on another social media feed or timeline. Note if a child is following a hashtag, e.g. #XFACTOR, porn is routinely marketed using popular hashtags so children will see this, and it’s not just links that are posted, it’s graphic images and videos - NOT Effective – Not in Scope
- Child visits forum/news site like Reddit and sees porn – **NOT Effective** - Not in Scope (OR ARE THEY?)

So the only instance of a children finding porn on the internet that will be fixed by this Bill is the first one – typing in a known porn brand – and that’s a seeker, not a stumbler. Totally against the Child Protection Goal of the Bill…surely? Removing proportionality fixes some of this and that’s the focus of this email, but serious thought should be given as to whether this Bill will actually do what it sets out to achieve, as from my thinking above, stumblers remain totally unprotected.

**Solution**

From the law passing to enforcing, let’s assume that’s 12 months. A greylist of 4M URLs already exists from Sky, but lets assume that’s actually much smaller as these URLs will I suspect, be page-level blocks, not TLDs. The regulator should contact them all within that 12 months, explaining that if they do not demonstrate they are AV ready by the enforcement date then they will be enforced against.

On the enforcement date, all sites on the greylist turn black or white depending upon what they have demonstrated to the regulator.

**REAL DAY 1 EFFECTIVENESS**

I think this can be achieved if the regulator is given adequate funding/resources, and compliant sites will do all they can to help with contact information. I don’t think it’s essential that this is written into the law, but if I were putting my name to it then I’d insert something that would ensure a reasonable level of effectiveness, giving the regulator a very clear achievement goal.

I would also add something regarding the “Initial determination period”, which I see as the time between the law passing and it being enforced.

**During the Initial Determination Period** (defined as 12 months from the law passing, or some other reasonable length of time) all current websites making pornographic material available on a commercial basis will be contacted by the regulator. They should demonstrate they are AV ready to the regulator X weeks (decide and define a reasonable time, to prevent everyone submitting their AV readiness on the final day) **before the Enforcement Date** (defined as the date the law will be enforced), or be notified they will be sanctioned on the Enforcement Date.

Again – **REAL DAY 1 EFFECTIVENESS**!

**Consequences if ignored**

Will not be an effective law, will not protect children, will penalise sites that comply. Will send a message to non-compliant sites that they can just sit tight until they get their first letter, which could be months/never if proportionality prevails over effectiveness.