

**COMMUNICATIONS
ALLIANCE LTD**



**House of Representatives Standing Committee on
Social Policy and Legal Affairs**

**Inquiry into age verification for online wagering
and online pornography**

COMMUNICATIONS ALLIANCE SUBMISSION
OCTOBER 2019

INTRODUCTION

Communications Alliance is pleased to have this opportunity to make a submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs *Inquiry into age verification for online wagering and online pornography*.

Communications Alliance and its Members strongly support the objective of ensuring that Australians younger than 18 years should not have access to online wagering and pornography sites and acknowledge the real and well-documented harms that can flow to younger Australians if efforts are not made to prevent such access.

Translating this objective into a robust and practicable framework that also protects the privacy and cyber security of individual users of an age verification system is, however, a complex task that must be approached carefully and methodically.

The failure of widespread and successful age verification systems to emerge points to this reality. It was further underlined in mid-October 2019, when the UK Government announced that its planned age verification regime, to prevent under-18s from accessing commercially offered online pornography, would not go ahead.

The Government reported that the system, which was originally scheduled to commence in July 2019, had experienced numerous technical issues relating to its implementation.

The planned system has also been subject to strong opposition from privacy advocates and warnings from cyber industry players who raised concerns that it would create opportunities for cyber criminals to persuade internet users to disclose private data. Industry welcomes the fact that the Committee's Terms of Reference include an examination of the risks of creating privacy breaches through age verification measures.

The UK system itself, when trialled, proved to be relatively simple to circumvent.

The Committee's consideration of these issues, as per its published Terms of Reference, should consider different models for age verification and where primary responsibility should lie for managing the regime. One supply-side-led system has been operating apparently with some effectiveness in Europe since 2015.

Other related issues that warrant examination as part of the Committee's Inquiry include:

- the interaction between any new proposal and the existing verification requirements under the *Broadcasting Services Act 1992*, Industry Codes of Practice and the *Federal Restricted Access Systems Declaration 2014*; and
- whether and how to manage future pressure for age verification requirements to be expanded to encompass a broader range of services.

In the meantime, and in the absence of any fully proven solution in the local or international marketplace, the Australian Government could consider the use of an independent testing house/technical assessor to provide advice to Government and agencies about the efficacy and/or risks associated with any proposed platform-based solutions.

About Communications Alliance

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

Recent Australian Experience

Past attempts to regulate access to online pornography by minors have often relied on the fact that a financial transaction was necessary to confirm the user's proof of age and grant access to the adult content.

In Australia, the *Content Services Code* was created by industry and registered by the Industry regulator, the ACMA, in 2008. Designed pursuant to the requirements of Schedule 7 of the *Broadcasting Services Act 1992*, the Industry Code sets rules to be used by designated content/hosting service providers to create a "Restricted Access System" to supply R18+ and MA15+ content online.

To obtain "proof of age evidence" the service provider needs to obtain a credit card number in the name of the end user (the assumption at the time the Code was written being that most credit card users are aged 18 or older), or a copy of a passport, birth certificate, driver's licence or tertiary institution ID card.

The Code provisions are largely irrelevant in 2019 for a range of reasons, including that:

- most pornography online is accessed via free streaming sites, with no transaction involved; and
- many Australians under the age of 18 now have access to debit/credit cards.

Access to online gambling sites still typically involves a financial transaction but, again, efforts to manage age verification by relying on credit card details is no longer an effective strategy.

The *Content Services Code* is badly in need of modernisation, but this cannot happen until the equally outdated Schedules 5 and 7 of the *Broadcasting Services Act* are updated and amended. The Federal Government has been promising since 2015 to revise the Act, including relevantly Schedules 5 and 7 (dealing with online content).

It is an enduring source of frustration to Industry that the Federal Department of Communications and the Arts (DoCA) has failed to take action on this issue over so long a period.

In late 2014 the ACMA made the *Restricted Access System Declaration 2014*, under the *Broadcasting Services Act* (replacing an earlier declaration made in 2007). The Declaration came into effect on 1 January 2015 and sets minimum requirements on providers of MA15+ and R18+ content.

It requires applicants seeking access to such content to apply for the access and provide a declaration that they meet the respective minimum age requirements, and requires content providers to take "reasonable steps" to confirm the age of applicants.

While well-intentioned, the relevance of the Declaration is challenged by the growth in recent years of free-streaming providers of pornographic content, located outside of Australia.

The Declaration applies to all online content. Accordingly, we suggest the Committee should first consider the extent to which the Declaration has been complied with, the extent the system for complaints, investigations and take down mechanisms set out in Schedule 7 of the BSA have been used and what this information suggests about the need for change and/or the practicality of introducing any alternative age verification system. We suggest, a next step in this review might involve an examination and publication of information regarding the existing system in order to inform discussion regarding alternatives.

Overseas Developments

In 2015, a scheme known as [AgeID](#) was launched to provide a secure age verification system for adult content websites in Germany.

The system is driven by website operators and links them to age verification platforms to check whether the data being supplied by an applicant for access to the site is genuine. Once verified, the user is given a code to enable them to login to the website.

The AgeID system – often colloquially referred to as the “Porn Pass” – appears to have been working with some effectiveness in Germany to date. According to AgeID’s own publicity material, the system verified 10,000 people during its first three years of operation. However, we note that number seems relatively low, and arguably ineffective in meeting its purpose, when viewed against the size of the German market.

In 2017, the UK Government created the *Digital Economy Act 2017*, which included provision for an age verification regime in the UK. In October 2017, however, the UK Government announced that the regime would not go ahead.

Numerous technical issues had dogged the attempts to introduce the system. During a trial of the regime The Guardian newspaper was able to verify an account with the email address IAmUnder18@mailinator.com in a matter of seconds by generating a non-existent credit card number.

The planned system raised the ire of privacy advocates. European cyber security firm, F-Secure, warned the system would be risky for users. “...people who share personal details with third-party age verification platforms need to know that attackers actively target this type of data and will likely find these databases very enticing.

“Criminals will almost certainly try to trick users into disclosing personal information by creating fake websites that look like legitimate verification pages, which is another risk users need to be made aware of,” the firm stated.

Potential Next Steps

Communications Alliance recognises the challenges involved in protecting minors from accessing online gambling and pornography and offers the following suggestions for the consideration of the Committee.

Given the difficulty of policing access to legal content generated offshore, we suggest the Australian Government should focus its effort on educational programs to better equip Australian parents to use existing available tools to limit their children's access to pornographic content on online gambling sites.

Communications Alliance operates the Family-Friendly Filter program, which links internet users to a range of commercially available internet filters – each of which has been rigorously tested and certified as to its effectiveness by independent testing house, Enex TestLab.

Further information about the program is available at:
<https://www.commsalliance.com.au/Activities/ispi/fff>.

At the risk of venturing into socio-cultural commentary, we believe that Australian parents, acting responsibly, can be far more effective at managing these issues than can a pure reliance on technological solutions.

As suggested earlier in this submission, the Committee might consider further examining the efficacy of the existing *Restricted Access System Declaration* before making recommendations on potential new directions.

The Government could also make greater efforts to cooperate with the Governments of nations where the major pornographic streaming content originates, to investigate whether those providers can be encouraged or required to create an effective supply-side verification system that also protects the privacy and security of end users.

Australian online gambling operators already have age verification requirements embedded in their terms and conditions of operation. Communications Alliance is working with the Department of Communications and the Arts and the ACMA on a protocol under which internet service providers (ISPs) will block access to illegal offshore gambling websites (irrespective of the age of the would-be user). Further details on this scheme are expected to be announced in the near future. We note, however, that addressing the issue of access to illegal offshore gambling websites raises different considerations from age verification to access otherwise legal online content.

The Government could also engage an independent testing house to assess the efficacy of new technological solutions as they appear and potentially become available for the Australian market.

Industry would be grateful if the Committee was to encourage the Department of Communications and the Arts to immediately commence consultation on necessary reform of the *Broadcasting Service Act 1992*.

Finally, industry views as alarming, the suggestion that the Government's controversial proposed facial recognition system could be used to strengthen age verification processes.

The potential for a facial recognition system to be abused and compromised is very real and risks creating harms far worse than those posed by the original 'problem'. We urge the Committee to recommend extreme caution in relation to any such proposal.



Published by:
**COMMUNICATIONS
ALLIANCE LTD**

Level 12
75 Miller Street
North Sydney
NSW 2060 Australia

Correspondence
PO Box 444
Milsons Point
NSW 1565

T 61 2 9959 9111
F 61 2 9954 6136
E info@commsalliance.com.au
www.commsalliance.com.au
ABN 56 078 026 507