Department for Digital, Culture, Media and Sport and Home Office Consultation for On-line Harms White Paper

Response from Mobile UK

July 2019

About Mobile UK

1. Mobile UK is the trade association for the UK's mobile network operators - EE, Telefonica UK (O2), Three and Vodafone. Our goal is to realise the power of mobile to improve the lives of our customers and the prosperity of the UK.

2. As mobile increasingly becomes the device of choice for running daily life both at home and at work, customers have come to expect more extensive coverage, more capacity and greater capabilities. Our role is to identify the barriers to progress, and work with all relevant parties to bring about change, be they Government, regulators, industry, consumers or citizens more generally.

Introduction

3. Mobile UK welcomes the opportunity to submit a response to the Government's consultation for the On-line Harms White Paper.

4. The mobile operators in the UK have worked both individually and jointly over very many years in the field of child protection. With the arrival of 3G in 2003, operators recognised that there was a potential risk to children of coming into contact with inappropriate content, once they had access to the new 3G devices with colour screens and a connection to the Internet.

5. In addition to all the work they undertook individually, partnering with NGOs such as NSPCC and ChildNet, they jointly published the first version of the [Code of Practice for the self-regulation of content on mobile](#) in 2004. Mobile UK, as the successor body to the original publisher, has taken on responsibility for the management of the Code of Practice.

6. The Code applies to all Mobile Operators in the UK and all Mobile Virtual Network Operators. It is sponsored by Mobile UK's members and has the active support of the larger MVNOs such as Tesco, Virgin and Talk Talk.

7. The principal feature of the Code is that operators apply a filter to the Internet access service by default for consumer customers. Consumers thus cannot get access to inappropriate content until the filter has been removed and it could only be removed once a customer has been through a robust age verification process.

8. The Code has been fully reviewed twice in the intervening years. At the last review, in 2013, the operators appointed the British Board of Film Classification (BBFC) to act as the independent body that provided the framework by which the filter was set and calibrated (i.e. helped operators with the tricky editorial decisions about what is not appropriate for children.)

9. The BBFC not only set the framework but also act as an appeal body in the event that a customer, mobile operator or web-site owner believes that a website is being incorrectly categorised, resulting in either under or over blocking. Each quarter, the BBFC [publishes a summary](#) of the decisions it has taken.

10. This open and robust process commands the strong support of our stakeholders and is a repository of information about some of the difficult decisions that the BBFC has had to make over the years. For example, one of the topics that is unsuitable for children, per the BBFC framework, is the 'promotion of suicide'. There has been at least one occasion where a legal view has had to be

sought as to whether the site in question was 'promotion' or just offering advice and support. These decisions can be very finely balanced. From experience, we do not underestimate the task facing the regulator that has to make such decisions about the content on the social media platforms.

11. The mobile operators gain considerable confidence from the approach of the BBFC because it is so thoroughly researched with expert groups and the public at large.

12. In other measures of the Code, mobile operators were early adopters of the Internet Watch Foundation's blocking list for illegal child abuse images.

13. Mobile operators will continue to invest in child protection, but we recognise that other parties in the value chain have a role to play in keeping customers safe on-line and we thus support the broad thrust of what the Government is trying to achieve. We would not, though, support any measures that jeopardised the arrangements we have in place, which we believe is an example of successful self-regulation underpinned by the voluntary arrangement established with the BBFC.

Mobile UK's responses to the questions in the consultation.

14. **Question 1**: **This government has committed to annual transparency reporting. Beyond the measures set out in this White Paper, should the government do more to build a culture of transparency, trust and accountability across industry and, if so, what?**

15. The Government has set itself an enormous task to set up the regulator for the businesses in scope (i.e. the platforms that allow users to share or discover user-generated content or interact with each other online.) This should be the focus of initial efforts.

16. It has been our experience that being transparent about the framework and the decisions taken by the independent body has been strongly supported by our stakeholders and we would encourage the UG platform regulator to adopt a similar approach, providing the volumes are not too overwhelming.

17. **Question 2: Should designated bodies be able to bring 'super complaints' to the regulator in specific and clearly evidenced circumstances?**

18. Yes

19. **Question 2a: If your answer to question 2 is 'yes', in what circumstances should this happen?**

20. 'specific and clearly evidenced' would seem to be an appropriate benchmark.

21. **Question 3: What, if any, other measures should the government consider for users who wish to raise concerns about specific pieces of harmful content or activity, and/or breaches of the duty of care?**

22. In the event that a member of the public or other stakeholder has a concern, the first port of call should be platform operator themselves. The independent regulator should only be brought in where the platform has failed to act or where there is disagreement over the appropriate course of action.

23. In our experience, the majority of issues are resolved quite satisfactorily when the customer makes direct contact with the provider. In our case, the BBFC only acts in an appeal role if an operator fails to act within the agreed time limit, or there is a difference of view.

24. **Question 4: What role should Parliament play in scrutinising the work of the regulator, including the development of codes of practice?**

25. No comments

26. **Question 5: Are proposals for the online platforms and services in scope of the regulatory framework a suitable basis for an effective and proportionate approach?**

27. Mobile UK supports the concept of a duty of care and understands that the UK Government believes that there will be a need for a new or expanded regulator to enforce this duty. However, our co-regulatory filtering regime with the BBFC is just one example of an innovative initiative online which the Government must ensure is not undermined by a new regulatory regime or burdened by an unnecessary layer of statutory regulation.

28. Developments online are rapid and international. A one-size-fits-all regulatory approach will not work. A range of regulators that are able to support industry to adopt best practice initiatives voluntarily and rapidly as new services and products develop has to be the most effective way to ensure the UK remains a world leader in ensuring internet safety for all its citizens but particularly children and the vulnerable. This points to the necessity that a new or expanded regulator must work alongside existing regulators such as the BBFC so that successful and effective voluntary and co-regulatory regimes are recognised and respected.

29. **Question 6: In developing a definition for private communications, what criteria should be considered?**

30. It is critical that the Government has an accurate and workable definition of private communications. Such communications must fall outside the scope of the intended regulator and there can be no risk of creating an overlap or conflict with the role of Ofcom.

31. No scenario should be created whereby a requirement to monitor and take down puts companies at odds with the prohibition on intercepting communications.

32. One to one and one to many phone calls, video calls and text messages must be out of scope.

33. **Question 7: Which channels or forums that can be considered private should be in scope of the regulatory framework?**

34. See our answer to Question 6. No scenario should be created whereby a requirement to monitor and take down puts companies at odds with the prohibition on intercepting communications. As a result, under the current legislative framework, we are clear that one to one and one to many phone calls, video calls and text messages must be out of scope. As such, services such as conference calls and video conference calls are out of scope.

35. The draft definition of scope states that it 'should apply to companies that allow users to share or discover user-generated content or interact with each other online'. On-line in this context essentially means the users are in a public or semi-public space such as Facebook or Instagram. Any associated private messaging may be within scope.

36. But purely private messaging services such as WhatsApp, which is designed for one to one or closed user group communication should be out of scope, even though some of the closed user groups can be quite large. Any monitoring of such a service, we feel, would be tantamount to an interception of communication.

37. The overall approach that the Government is adopting is radical and innovative. It is important for stakeholder buy-in and sustainability that there is no over-reach.

38. **Question 7a: What specific requirements might be appropriate to apply to private channels and forums in order to tackle online harms?**

39. The task is to set the scope so that the regulatory requirements apply only to non-private communications platforms and not to private communications platforms

40. **Question 8: What further steps could be taken to ensure the regulator will act in a targeted and proportionate manner?**

41. There is always an overriding requirement that the regulator act in a targeted and proportionate manner.

42. **Question 9: What, if any, advice or support could the regulator provide to businesses, particularly start-ups and SMEs, comply with the regulatory framework?**

43. No comments

44. **Question 10: Should an online harms regulator be: (i) a new public body, or (ii) an existing public body?**

45. No comments

46. **Question 10a: If your answer to question 10 is (ii), which body or bodies should it be?**

47. No comments

48. **Question 11: A new or existing regulator is intended to be cost neutral: on what basis should any funding contributions from industry be determined?**

49. The White Paper proposes that the independent regulator will be funded by an industry levy. The funding contributions should only be applied to those that supply the services in scope. The levy must be in some way proportionate to activity within the UK.

50. We would welcome clarity from Government as to how this would only be levied on companies covered by this new regime. It would not be justifiable for companies offering services outside the scope (such as communications service providers) to contribute financially to this new regime.

51. **Question 12: Should the regulator be empowered to i) disrupt business activities, or ii) undertake ISP blocking or iii) implement a regime for senior management liability? What, if any, further powers should be available to the regulator?**

52. Mobile UK is very cautious in supporting ISP blocking at this stage, particularly as mobile operators are in the process of implementing the blocking in relation to the Digital Economy Act. This has been a drawn-out process and unexpectedly resource hungry activity which has come on top of an already heavy compliance burden (such as voluntary bill caps, Payment service directive caps, roaming caps, various premium rate caps). As yet, there is no evidence that this approach is effective in bringing service providers into compliance or providing extra protection to consumers. In any event, ISP blocking, should only be used as a last resort, once all other ways of encouraging and ensuring compliance have been exhausted.

53. The DEA process, moreover, cannot simply be reused for blocking individual websites for other purposes and operators would need to develop an entirely new process. We would need clear guidance on what websites are considered non-compliant, an agreed process for notifying operators when websites are required to be blocked or reinstated and an estimate of the volume of websites that would be scope.

54. Mobile operators in the UK block content that appears on the IWF list. As described in the introduction, we also apply a child protection filter to inappropriate sites and would expect minors to be protected from much non-compliant content, in any event.

55. **Question 13: Should the regulator have the power to require a company based outside the UK and EEA to appoint a nominated representative in the UK or EEA in certain circumstances?**

56. No comments.

57. **Question 14: In addition to judicial review should there be a statutory mechanism for companies to appeal against a decision of the regulator, as exists in relation to Ofcom under sections 192-196 of the Communications Act 2003?**

58. Yes

59. **Question 14a: If your answer to question 14 is 'yes', in what circumstances should companies be able to use this statutory mechanism?**

60. An approach that is broadly equivalent to the Ofcom process.

61. **Question 14b: If your answer to question 14 is 'yes', should the appeal be decided on the basis of the principles that would be applied on an application for judicial review or on the merits of the case?**

62. An approach that is broadly equivalent to Ofcom.

63. **Question 15: What are the greatest opportunities and barriers for (i) innovation and (ii) adoption of safety technologies by UK organisations, and what role should government play in addressing these?**

64. It is hard to over-emphasise that regulatory and technological solutions will only play a small part in keeping people safe on-line (as in the off-line world too.) We must all continue to support customer education, through individual company work, and the efforts of third parties such as Internet Matters, Get Safe on-line, Childnet and others in helping the user base to help themselves and to foster an on-line culture that drives out inappropriate and offensive behaviour.

65. **Question 16: What, if any, are the most significant areas in which organisations need practical guidance to build products that are safe by design?**

66. No comments

67. **Question 17: Should the government be doing more to help people manage their own and their children's online safety and, if so, what?**

68. See our response to Q15. It is important there is not a proliferation of advice.

69. Some of the lead actors in this field now have a certain longevity, experience and brand awareness. The focus should be on promoting their work, not starting afresh with new initiatives.

70. **Question 18: What, if any, role should the regulator have in relation to education and awareness activity?**

71. See our response to Q15.