BBC response - ICO's Age appropriate design: a code of practice for online services

Introduction

1. We welcome the ICO's consultation on age appropriate design and their efforts to reframe the online policy debate, putting the "best interests of the child" front and centre. We strongly support the principle of protecting young people on-line and giving them the best and safest on-line experience.

2. However, the BBC has significant concerns about the Code as drafted. We support the submission that BSAC have made to the consultation – and echo many of their concerns about potential unintended consequences of the code as drafted, and the need for proportionality. We have also provided a joint submission with the other UK pubic service broadcasters (PSBs) which highlights the significant risks that age gating, or a regime which prevents personalisation for young people on our services, would have for the provision of public service content to all audiences. This submission highlights some specific points in relation to the BBC.

3. The BBC makes a unique contribution to democracy, education, the economy, our culture and shared understanding, and to the world through our distinctive content across all genres and in specialist areas such as religion, arts, music and children's; and we deliver impartial and accurate news that supports our democracy. We are charged with providing these services to as wide an audience as possible in a variety of different ways.

4. Our content is already subject to high editorial standards, and regulatory checks and balances – and we have in place market leading approaches to protecting children on line. Furthermore, we are a trusted source of advice and guidance for children and parents for how to deal with potential on-line harms.

5. The BBC has responded well to technological change and the rapidly changing media market through greater collaboration and innovation. We are committed to reinventing public service broadcasting for a new generation - making sure that PSB content can reach and remain relevant to younger audiences. BBC Sounds and the BBC's proposals for iPlayer are the most pressing and vital examples of how the BBC needs to be able to provide new and innovative services that provide for changing consumer habits and demands if we are to continue to fulfil our public service mission. The responsible use of data is part of that and the proportionate use of data can have huge advantages in creating more personalised services, more appropriately targeting content for young people and ensuring they can get the full benefits from the our public service offer.

6. We are concerned that the code, as drafted, at least in part adopts prescriptive language that is not reflective of its non-mandatory status and which has the potential to prevent us from meeting our mission and public purposes, and could prevent us from providing the benefits of public service content to all audiences – especially young people.

Regulation and Protection for Young People

7.   The BBC's services are already robustly regulated.

8.   The BBC's broadcast content is already regulated by Ofcom and subject to the provisions of the Broadcasting Code. We note that the scope of the Code only applies to information society services (ISS), which reflects the existing well-functioning regulatory regime that exists for broadcast.

9.   It is worth noting that on-demand audiovisual media services[1] are already regulated under the EU Audiovisual Media Services Directive. In the UK, the provisions of this Directive are enforced by Ofcom which has put in place statutory rules for UK on-demand programme services (ODPS) which provide for even greater protection for children.

10. Furthermore, all BBC content – whether broadcast, online or on BBC channels on social media – is governed by our Editorial Guidelines. These include substantial policies and advice on child protection. We also have very clear guidance about what should appear on the BBC online – for example, any content on or one-click away from the BBC Home page would normally be suitable for a general audience.

11. BBC apps and other online services for children are designed with appropriate safeguards in place. For example, the CBBC Buzz app[2] has a team of moderators to approve or decline user-generated content, extensive parental controls and no means to make negative comments about other users' content.

12. Online services such as iPlayer have protection systems such as G for Guidance, which not only provides a parental lock, but also offers programme information which replicates the information available for post watershed programmes on TV. When this system was introduced it was offered to the other UK national PSBs, with the help of Ofcom, which enabled all UK PSBs to have the same system of guidance and pin protection. We also use the G for Guidance principles and labelling for our off platform on demand content. We aim to ensure that our judgement on guidance warnings is as up to date as possible, particularly on language, following Ofcom research on changing perceptions on offensive language.

13. The BBC is also a UK-leader in providing advice and guidance to children and their parents on how to navigate online. This includes the *Own It*[3] website (developed from the Stay Safe initiative) which collates BBC and third-party resources for 9-12 year olds to help them stay safe and enjoy their time online.

---

[1] Article 1 of the Audiovisual Media Services Directive defines an audiovisual media service as *"a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes, in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC. Such an audiovisual media service is either a television broadcast as defined in point (e) of this paragraph or an on-demand audiovisual media service as defined in point (g) of this paragraph".* While television broadcast services are excluded from the scope of the Code, on-demand audiovisual media services are clearly intended to be included, if they are likely to be accessed by children.

[2] http://www.bbc.co.uk/mediacentre/latestnews/2018/cbbc-buzz]

[3] https://www.bbc.com/ownit

Age Verification

14. As set out in our joint submission with the other public service broadcasters we have significant in principle concerns with introducing universal age gating procedures for our services. We believe this would significantly inhibit our ability to offer a universal service, to all audiences, free at the point of use.

15. Indeed, we are concerned that any such move could have the effect of driving audiences away from PSBs and PSB content. This would be a perverse outcome which would not be in the public interest.

16. We also question the practicality of how any age verification mechanism might work. The BBC underwent a market review of age verification mechanisms in 2018. It was clear that the age verification services available in the market were very immature and were not able to offer a reliable, scale, solution.

17. We believe that it would be sensible for the ICO to allow time for an assessment of how the Digital Economy Act 2017 provisions have worked in practice before putting in place a new requirement for all ISS to either default to a child-appropriate setting or put in place robust age verification systems.

Personalisation and Use of Data

18. The BBC has adapted well to the changing media environment and has developed a series of on-line services and offerings that delivers content to audiences in a way that is becoming more and more common place.

19. The transition to internet delivery of BBC services creates opportunities for the BBC to offer richer, more targeted experiences for audiences and new ways of bringing the nation and communities together

20. Fundamental to that is the ability to personalise services – and to allow us to recommend appropriate content to our users – by making appropriate use of data and other techniques.

21. We recognise some of the harms that the draft code is seeking to prevent, but the use of data, greater personalisation and the use of nudge and other techniques are crucial to enhancing our service. Indeed, for trusted players like the BBC, they are crucial to maximising the value of public service broadcasting – by introducing our audiences to new public service content that they might not have otherwise have discovered, or encouraging them to make use of other BBC services which entails spending more time on-line or with the BBC.

22. Therefore, we believe the ICO needs to consider a more proportionate and nuanced approach than the one currently set out in the draft code to ensure that the responsible and beneficial use of data and these techniques is not lost.

Scope of code

23. Finally, we would welcome clarification from the ICO on whether the ICO considers the provision of services via set top boxes, voice enabled devices and other connected toys and devices are in scope of the new code.