

## CONFIDENTIAL

### Channel 4 Submission

#### Information Commissioner's Office Consultation on Age Appropriate Design: a Code of Practice for Online Services

Channel 4 welcomes the opportunity to respond to the Information Commissioner's Office consultation on the draft code on Age Appropriate Design ("the draft Code").

#### Channel 4

Channel 4 is a publicly-owned, commercially-funded public service broadcaster. Channel 4's not-for-profit status ensures that the maximum amount of its revenues is reinvested in the delivery of its public service remit. As such our commercial success is intrinsically linked to creative and public service impact.

Channel 4 has a remit to be innovative, diverse and distinctive. Channel 4's detailed statutory public service remit includes requirements to produce high quality news and current affairs; to support and stimulate well-informed debate on a wide range of issues, including by providing access to information and views from around the world; as well as requirements to challenge established views and promote alternative views and new perspectives.

Channel 4 is also required to cater for young audiences with specific remit requirements to appeal to older children and young adults. Our remit to be alternative and different manifests itself in content that speaks to young people about things and in a way that engages them with contemporary issues.

Public service broadcasting plays an integral part in UK's democratic and cultural life, as well as supporting UK's thriving creative economy.

At the heart of the PSB is trusted and impartial news and UK-originated content that speaks to the different communities and nations of the UK. These have become more, not less important, against the backdrop of deep division in the UK, concerns around the impact of globalisation and growing unease around fake news and disinformation.

Channel 4 and other UK PSBs continue to be significant investors in original UK content - £2.6 billion on first run UK originated content in 2016. Despite audience fragmentation, PSBs continue to play a key role in bringing the nation together through thought provoking dramas such as *Kiri* and *Brexit: The Uncivil War*; comedies such as the *Last Leg* and the *Big Narstie*; to the ground breaking coverage of the *Paralympic Games*.

Across our platforms and media channels, we offer a unique, trusted environment for viewers, content creators and advertisers.

Channel 4 services are universally available to all UK citizens. Since the Digital Economy Act 2010, Channel 4 has also been explicitly tasked with delivering its remit across its portfolio of services including on demand.

## All 4 – Channel 4’s Video on Demand Service

Channel 4’s Video on Demand (VOD) service All 4 is the digital home of Channel 4 content. All 4 provides access to content originally shown on our linear channels and bespoke online content in one place. Registered viewers must be aged 16 or over. As audiences watch more TV via on demand services, All 4 has become an increasingly important means of us reaching audiences with publicly valuable content. This is particularly true of younger adults with whom Channel 4 has a particularly strong resonance.

Channel 4 has been at the forefront of digital innovation in UK broadcasting, both creatively and commercially. Channel 4 was the first broadcaster in the world to launch a VOD service – 4oD in 2006 – which 13 years later has evolved into All 4.

As well as being the first broadcaster in the UK to launch an on-demand service, Channel 4 was also the first free to air broadcaster in the UK to register viewers online, enabling us to tailor programme recommendations and deliver targeted advertising to viewers. All 4 is funded by advertising.

All 4 currently has nearly 20 million registered users including more than two-thirds of all 16-34s in the UK - demonstrating Channel 4’s ability to reach audiences across different platforms and compete with other online services. All 4 continues to grow and generated £100 million a year in 2017<sup>1</sup> with 24% growth in our digital revenues. These innovations are enabling us to adapt to behavioural shifts in viewing which help maintain our public service broadcasting contribution.

### Ofcom Regulation - All 4

All 4 is licensed and its editorial content is regulated by Ofcom. Channel 4 believes that there is already effective and robust regulation of VOD services in the UK which protects children. The principles established in the EU’s Audio-Visual Media Services (AVMS) Directive provide an effective framework in protecting minors for both traditional broadcasting and the on-demand world.

The Ofcom Broadcasting Code in the UK has built on these principles with a section dedicated to protecting children. Current AVMS rules allow the flexibility for Member States to implement additional regulation as necessary to meet public policy objectives. According to Ofcom research viewers have high trust in the UK’s regulatory framework.

To protect viewers under 18, Ofcom specifically requires On Demand Programme Service (ODPS) or VOD providers to ensure that:

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<sup>1</sup> Latest published data

- Restricted material which has been or would be classified in the R18 category by the British Board of Film Classification (BBFC) or material; which might seriously impair the physical, mental, or moral development of under 18's, is made available in a way which secures that under 18 will not normally see or hear it.
- "Prohibited material" which would be refused a classification by the BBFC does not appear.
- Incitement to hatred: programmes do not contain any material likely to incite hatred based on race, sex, religion or nationality;

Advertising on ODPS must comply with rules relating to product placement and sponsorship. Furthermore, as required by the AVMS Directive all advertising on ODPS must also:

- Be readily recognisable, and cannot contain any surreptitious advertising or use subliminal advertising techniques;
- Not encourage behaviour that risks the health or safety of people; and
- Not advertise tobacco products, prescription-only medicines or medical treatments.

Channel 4 has sought to ensure that its online services sufficiently protect minors from accessing unsuitable content by providing detailed programme content information and clearly signposting content that is inappropriate for under-eighteens. This includes operating a "G" for guidance system and offering parents the option to set a PIN code so a device does not play either 16 or 18 rated content unless you type in the PIN code.

Advertising shown on All 4 is cleared for compliance under the CAP codes by an external agency Clearcast, who ensure that advertising is not misleading, harmful or offensive.

Viewers aged between 16 and 18 watching content on All 4 do not receive any advertising that involves alcohol or gambling.

All 4 has historically received very few complaints in relation to issues around inappropriate content being served or shown to children. The service is editorially aimed at those who are 16 and over. Channel 4 has always considered it to be a joint obligation, on us as an organisation and parents, to decide what children get to watch and what content is age appropriate.

The heavy compliance burden required by the Code seems unduly onerous on public service broadcasters, who are already heavily regulated in terms of their content output and have a different risk profile to less regulated social media platforms that contains a lot of user generated content.

### **Business and Editorial Impact of the Draft Code on All 4**

Channel 4 believes the proposed ICO draft Code would have a significant impact on All 4. The requirement to apply all sixteen standards in the Code to all users unless there is a robust age-verification mechanism to distinguish adults from children would

lead to a significant reconfiguration of the service both editorially and technologically - despite the service currently targeting users 16 years old and over. It could lead to disproportionately high regulatory obligations, when taking into account the existing regulatory standards we comply with; and significant changes to our service, such as different versions of the service having to be made available to different age groups. This would be a significant financial and technological burden for a free service such as All 4 and a significant impact on our ability to generate the commercial revenues to support our public service delivery.

The Code suggests that unless online services employ robust age verification systems, all online users must be assumed to be children and treated as such from a privacy perspective. This would mean online services applying the following settings unless the service provider can demonstrate a compelling reason not to:

- Default “high privacy” settings
- Data minimisation
- Data sharing not permitted as default
- Geolocation off by default
- Profiling off by default

Channel 4 believes the cumulative requirements of the Code to set by default, high privacy settings; switching off geolocation and profiling, would mean that All 4 would not be able to serve targeted advertising to any users.

This would have a significant impact on Channel 4’s ability to generate advertising revenues with a subsequent negative impact on our ability to meet both our public service remit and sustain investment in programmes made by UK production companies.

Removing our ability to provide targeted advertising on All 4 is likely to see a reduction in revenue, and in parallel brands switching advertising spend to the leading digital players established outside the UK. Less revenue generated by All 4 will have a subsequent impact on investment in PSB and UK originated content.

This will also have an impact on competition and likely lead to the strengthening of the dominant digital operators such as Google and Facebook who already between them control over 85% of the global digital advertising market. Audiences may also switch to pay VOD providers as they will already likely deploy age verification mechanisms if purchases are made using a credit card.

### **Age Verification Systems – Free Services**

The draft Code requires online services that are likely to be accessed by children to have robust age verification mechanisms in place, that children cannot circumvent in order, to access content.

As a public service broadcaster Channel 4 supports the ambition of better protecting children's personal data and we want to work with the ICO and other stakeholders on how best to achieve this.

However, it is important to note that implementing more robust age verification measures will provide a further barrier for access to our service, which Channel 4 is legally required to make universally available and we believe implementation will result in a substantially poorer user experience of our service.

The draft Code acknowledges that "age verification tools are still a developing area" and Channel 4 is not aware of effective age verification tools which currently exist on the market for free services such as All 4. Channel 4 welcomes the Commissioner's statement of her willingness to "support work to establish clear industry standards and certification schemes to assist children, parents and online services in identifying robust age-verification schemes which comply with data protection rules". Channel 4 would be happy to participate in this work with the ICO to establish clear industry standards.

Channel 4 believes the Code needs to take a proportionate risk-based approach when considering which services should come under the scope of the Code. The current trigger for inclusion in the draft Code is an ISS service that processes "personal data and are likely to be accessed by children in the UK" for regulation – we believe the term "likely to be accessed by children" is too broad and will capture many services who do not have a commercial interest in processing data of children under 16.

The Code should focus on services which target children and potentially cause significant harm in relation to processing of their data and privacy rather than already heavily regulated editorial services such as All 4. The heavy compliance burden required by the current draft of the Code seems unduly onerous on public service broadcasters, who are already heavily regulated in terms of their content output and have a different risk profile to a less regulated social media platform that contains a lot of user generated content.

From reading the proceedings in Hansard relating to the adoption of Code dated 11<sup>th</sup> December 2017, there were no indications from the Members of the House of Lords who advocated for the introduction of Statutory Code for Age Appropriate Design that they were seeking to include services targeting 16 years or over or established VOD services such as All 4.

Channel 4 believes an effective ICO Code should take a risk-based approach and should not cover VOD services already effectively regulated by Ofcom.

### **Inconsistency with GDPR Data Minimisation Principle**

The principle of data minimisation in the GDPR means that data controllers must only collect and process personal data that is relevant, necessary and adequate to accomplish the purposes for which it is processed.

Channel 4 believes the requirement for online services to implement robust age-verification mechanisms would mean the collection of more personal data (and confidential data such as passport and credit card details) which we believe would be inconsistent with GDPR's data minimisation principles.

Channel 4 believes an unintended outcome of the Code in its present form would result in Channel 4 processing more personal data of this nature than we currently do and experiencing the burden of compliance with extra security measures to protect such data and ensure that it is not the subject of a data security breach.

The required investment in security technology would divert resources away from investment in original UK content, a key part of our public service remit.

### **Time Limit for Implementation**

The time limit given in which organisations need to achieve compliance with this Code is too short at 12 months. We are still in the initial stages of evaluating what compliance with the Code would mean for the design of our All 4 service. This will inevitably take some time and then will require a vast amount of fundamental development work in order to re-design the service so that it is compliant with the Code, in areas including the user experience design process and implementing age verification technology. Our experience suggests implementing the Code could take significantly more time than anticipated by the ICO.

### **Conclusion**

- Channel 4 believe a proportionate response is appropriate that differentiates public service broadcasters' VOD services from other, less regulated, online service providers. Channel 4 therefore propose that PSBs are excluded from the scope of the Code, given that:
  - all the content we offer on our services – both the editorial content and the advertising content – is already subject to heavy regulation and rigorous compliance processes to ensure its suitability for viewers;
  - all the content shown online adheres to the strictest standards of the Broadcast Code for linear TV services set by Ofcom as well as the rules for on-demand programme services;
  - we have in place a range of parental tools to help make informed and appropriate choices, for example G for Guidance rating, with accompanying programme information and parental lock through pin protection to ensure that the registered profile user can put in place these additional safeguards against children accessing inappropriate content via that account.
- Channel 4 supports the ambition of better protecting children's data online, and we want to work with the ICO and other stakeholders on how best to achieve this.

- Channel 4 acknowledges that Parliament has required the ICO to come forward with a Statutory Code of Practice in the Data Protection Act 2018 within a tight deadline. Before adopting the Code, Channel 4 would welcome greater engagement with the ICO to fully understand the intentions of the Code, discuss the likely impact on All 4 and what would be achievable with the current age-verification mechanisms available on the market.
- The scope of the services included in the draft Code is too broad and its impact would be disproportionate including on established VOD services such as All 4. The draft Code in its current form will disproportionately impact free ad funded services such as All 4, despite the service targeting those who are sixteen years old and over. The draft Code does not consider the likely editorial or commercial impact on public service broadcasters. Channel 4 would urge an impact assessment on freedom of expression and media plurality before the Code is adopted.

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