

The logo for the Authority for Television On Demand (ATVOD) features the letters 'ATVOD' in a bold, white, sans-serif font. The 'A' is stylized with a triangular shape. The letters are set against a solid black rectangular background.

ATVOD

THE AUTHORITY FOR TELEVISION **ON DEMAND**

For Adults Only?

Underage access to online porn

**A research report by the Authority for
Television On Demand (“ATVOD”)**

Published: 28th March 2014

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1. Executive summary

The Authority for Television On Demand (“ATVOD”) is the independent co-regulator for the editorial content of UK media services which have as their principal purpose the provision of ‘tv-like’ programmes on-demand. Statutory rules enforced by ATVOD include the requirement that a regulated service offering content which might seriously impair the development of under-18’s can do so only if the material is made available in a way which secures that children and young people will not normally see or hear it.

In common with others, ATVOD considers that ‘hardcore porn’ content comparable to the BBFC R18 classification ‘might seriously impair’ under 18’s and consequently requires effective age verification measures and access control mechanisms on regulated UK based services to protect children and young teenagers, preventing their normally accessing this level of pornography.

However, ATVOD is acutely aware of the limitations of this protection. Under-18’s can still access internet hardcore porn provided by services based offshore. In many countries no comparable protection is required. ATVOD is powerless to take any action against those services, even though they may be directed at the UK, may be freely accessed by children of any age and may be among the most prolific providers of pornography which on a DVD could be sold only in a licensed sex shop in the UK. Some on-line providers offer content which would be banned altogether from distribution in Britain on DVD.

Despite this, little is known about the scale of underage access to adult websites. ATVOD has therefore commissioned an analysis of research data held by Nielsen Netview in order to throw more light on the issue and to establish the extent to which the adult websites young people use are operated from (and therefore regulated in) the UK.

Crucially, the figures are based on the actual online activity of a panel of approximately 45,000 UK internet users, using methodology broadly similar to the measurement of television viewing. This offers a significant advantage over other research: rather than basing findings on what respondents say they did, this study derives its data from measuring what participants actually did.

However, despite this high level of veracity, it is very likely that the scale of use remains under-stated. This is because, for technical reasons, the research measures only online activity through a PC or laptop and excludes access through a smartphone, tablet or other device: the results are therefore likely to underestimate significantly the number of underage visits.

The research reveals that

- 44,000 primary school age children (aged 6 - 11) in the UK visited an adult website from a PC or laptop in December 2013.
- The figure rises to 200,000 for children aged 6 - 15 and to 473,000 for those aged 6 – 17.
- In all, one in twenty UK visitors to an adult website during that month was underage.
- One website alone – Pornhub.com – was visited by 112,000 UK males aged 12 -17 using a PC or laptop in December 2013. Pornhub.com provides instant, free and unrestricted access to thousands of hardcore pornographic videos featuring explicit images of real sex.

ATVOD has verified that 23 of the top 25 adult websites visited by UK internet users (including Pornhub.com) provide instant, free and unrestricted access to hardcore pornographic videos and still images featuring explicit images of real sex. The videos were equivalent to, or stronger than, those passed R18 by the British Board of Film Classification for DVD release. R18 DVDs can only be sold to adults who visit a licensed sex shop, yet the websites made equivalent (and stronger) material available to any visitor, of any age.

The business model on which much of the international online adult industry operates revolves around offering unrestricted on-line access to hardcore pornography, free of charge, as a 'loss leader' designed to encourage users to sign up to pay-per-view or subscription services. Therefore, whilst ATVOD's interest lies in protecting under 18's from exposure to hardcore porn online, the data analysis included details on usage of adult websites by over 18's which may help inform the formulation of public policy initiatives. In particular the data revealed how the UK is clearly a significant market for the worldwide adult industry. A total of 9.4m people in the UK accessed an adult website at least once from a PC or laptop in December 2013. Those visitors spent on average 2½ hrs on adult websites over 10 visits during that month – an average of 15 minutes per visit – and clocked up a total of more than 1.4 billion minutes.

The data published today complements existing evidence relating to the take up and efficacy of parental control software, and previous studies demonstrating the extent of parental concern over children's access to online pornography. Together, the evidence clearly points to the value of expanding the range of public policy initiatives under consideration. Alongside other initiatives, Government should act to encourage providers of adult services – wherever they are based - to behave responsibly by putting in place robust age verification and access control mechanisms. As the internet crosses borders with ease,

the policy responses will need to be tailored according to whether the website is being provided from within the UK, the EU or the rest of the world.

UK based providers are already regulated by ATVOD under the Audiovisual Media Services Directive (“the AVMS Directive”). They are required by ATVOD to keep hardcore porn out of reach of children on the grounds that it “*might seriously impair*” their development. ATVOD’s judgement that hardcore porn might seriously impair under 18s is not universally shared and relies on the application of the precautionary principle, as conclusive evidence either way is lacking, for ethical reasons, and is likely to remain so.

EU based providers are regulated under the same AVMS Directive. But some Member States do not consider that hardcore porn “*might seriously impair*” under 18’s, so do not impose restrictions similar to those deployed by ATVOD in the UK. This means that online services based in, for example, The Netherlands, can and do target the UK and provide unrestricted access to hardcore pornography.

Non-EU based providers are often completely unregulated. The need to address the threat to children posed by these unregulated offshore adult services is the most important issue underlined by this research. The leading pornographic businesses make their content available in two ways – by offering access to those who pay for a subscription and by providing unrestricted access for everyone to free clips, including on so-called ‘tube sites’ (such as Pornhub) which act as a shop window to promote the core subscription based services. As the provision of free unrestricted hardcore porn is designed to generate revenue through associated pay services, the obvious effective policy in relation to non-EU based providers would be to ‘follow the money’. It is clear that significant sums are flowing from UK customers to foreign websites which allow children to access hardcore porn. Cutting off that flow of funds to services which fail effectively to protect children would provide a powerful incentive for porn websites to put in place effective age verification and access control mechanisms in order to restart the flow of funds from the UK. It would not affect the free services directly – because by definition they do not charge users – but it would encourage effective child protection by undermining the business model on which they depend. Without the money which flows to the underlying pay sites, the tube sites simply cannot exist.

ATVOD has therefore been working with the UK payments industry – including Visa Europe, MasterCard, PayPal, the British Bankers’ Association, the Payments Council and the UK Cards Association - to consider how that flow of funds might be cut-off, and a draft process has been designed. But the payments industry has made clear that, despite Crown Prosecution Service advice that foreign websites may be in breach of the Obscene Publications Act (“OPS”) if they provide unrestricted access to hardcore (“R18”)

pornography, the absence of clear case law on the issue precludes such an initiative. For the OPA does not provide sufficient certainty for them to act without fear of legal challenge (no relevant prosecutions appear to have been brought since the Crown Prosecution Service guidance was first published in 2005). In the absence of such clear case law, fresh legislation would be required.

ATVOD therefore recommends that:

- UK Government act to provide the statutory underpinning necessary for the UK payments industry to act, without fear of legal challenge, to prevent payments flowing from the UK to online services which allow under 18's to access hardcore pornography.
- UK Government work to secure changes to the Audiovisual Media Services Directive to require all Member States to ensure that media services within their jurisdiction keep hardcore porn out of reach of children (thereby mirroring the action taken by ATVOD in the UK). In the shorter term, UK Government should work with fellow Member States to seek agreement on UK-style child protection measures, where these are not already in place.
- UK Government enact during this Parliament the legislation promised in the DCMS strategy paper "Connectivity, Content and Consumers" published in July 2013. Such legislation would remove any doubt that material that would be rated R18 by the British Board of Film Classification must be put behind access controls on regulated UK-based services.

2. Foreword

As the UK regulator of video on demand services, we are responsible for ensuring that a very broad range of on-demand media services comply with a set of statutory rules introduced under a European Directive in 2010. The rules are less strict and less comprehensive than those that apply to television broadcasts, but put in place for the first time a regulatory framework for video on demand services provided from EU Member States. The regulations set minimum standards designed to ensure a basic level of protection for users of those services, especially children.

The services we regulate cover a very broad range, from mainstream TV catch-up and movies-on-demand - not the subject of this report - to less mainstream services, including those which provide explicit pornographic content. One of the statutory rules enforced by ATVOD in relation to UK based services is particularly relevant to such 'adult' services. It requires that material "*which might seriously impair*" the development of 18s must be provided in a manner which secures that those under 18 do not normally see or hear it.

The question of whether pornography seriously impairs under 18's cannot be resolved conclusively through research, for ethical reasons. However, having reviewed such (correlational) evidence as does exist, we have concluded that hardcore pornography – equivalent to that which would be classified R18 by the BBFC for sale on DVD only in licensed sex shops – is material which *might* seriously impair under 18's. We therefore take robust action to ensure that it is kept out of reach of children on the services we regulate.

Our guidance on compliance with this statutory rule is clear:

Having an 'I am 18' button, or requiring users to enter a date of birth, or to use payments methods which are open to under 18s, is not sufficient. If UK video on demand websites are going to offer explicit sex material they must know that their customers are 18, just as they would in the 'offline' world.

There are a number of ways in which this can be done: the website operator can ensure that access to explicit content is restricted to those who have provided evidence of being at least 18 years old, such as a valid credit card. For those who wish to accept payment by methods which do not constitute evidence of adulthood (such as debit or electron cards), personal data can be collected and checked against a reliable third party database such as the electoral roll. A variety of proprietary age verification services will, for a fee, verify the age of a potential website customer against such databases in real time in just a few seconds. Once the age of the customer has been verified, their access to explicit content can be controlled through use of passwords or PIN numbers. The age verification standards

required by ATVOD are not unusual or unduly onerous. They have been designed to mirror closely those required for many years by the Gambling Commission to protect children in relation to online gambling websites.

This is not censorship. There is nothing in the ATVOD Rules which interferes with the right to provide sexually explicit material to an adult online. But pornography is a product which is produced and designed for use by adults, not children. That is surely why the industry that makes and sells it calls itself 'the adult industry'. We therefore do not believe there can be any justification for UK providers of sexually explicit pornographic material to make such images available to under 18s. The law requires that UK on demand services keep such material out of reach of minors and we are committed to ensuring that UK providers of video on demand services comply with the statutory rules.

Some may argue: *"that's all very well, but what's the point of making UK websites act to protect children when there are many more porn sites operating offshore, but fully accessible within the UK?"* That is why we have set out in this report practical proposals for dealing with offshore websites which allow children to view hardcore pornography.

Of course the problem of children accessing online porn cannot be fixed simply by acting against irresponsible UK providers of adult content - we fully understand that. But neither can it be solved without acting against UK providers of adult content who fail to protect children and the action we take ensures that breaches of the rules by UK providers are rectified quickly. However, if children are to be better protected from exposure to online pornography, we believe that the current regime for UK based services needs to be strengthened and supplemented by public policy initiatives designed to encourage non-UK providers of adult content to put in place the protections required of their UK based competitors.

In light of our experience to date, we commissioned the data analysis highlighted in this report in order to throw more light on the scale of the issue, and the options for action. Having considered the findings, we are more convinced than ever that the problem is serious and that Government action is not only justified but urgently required, especially in relation to adult websites operated from outside the UK. Key among these is the proposal that Government should put in place the statutory framework necessary for the UK payments industry to prevent funds flowing from this country to websites which allow children to access hardcore pornography.

Ruth Evans

Chair, ATVOD

3. Background

The Authority for Television On Demand (“ATVOD”) is the independent co-regulator for the editorial content of UK media services which have as their principal purpose the provision of ‘tv-like’ programmes on-demand. It was designated by Ofcom in March 2010 and enforces the regulations for video on demand services set out in Part 4A of the Communications Act 2003.

Statutory rules enforced by ATVOD include the requirement that:

“a regulated service offering content which might seriously impair the development of under-18’s can do so only if the material is made available in a way which secures that children and young people will not normally see or hear it”

ATVOD considers that content comparable to the BBFC R18 classification ‘might seriously impair’ under 18’s. This is the hardcore pornography sold only in licensed sex shops, or shown only in specially licensed cinemas, restricted to consumers aged 18 and over. ATVOD therefore requires that effective age verification measures and access control mechanisms are in place on regulated services to prevent children and young teenagers normally accessing this level of pornography. Together with the prohibition of material likely to incite hatred, the protection of children from exposure to hardcore pornography presents ATVOD with the most important of its statutory duties in regulating editorial content.

The impact or harm stemming from programming in this area is very difficult to quantify and probably impossible to substantiate by empirical research. Primarily, ethical constraints severely restrict what research can be carried out among young people about pornography, and the long term effects are difficult to assess through empirical research. Consequently, ATVOD regulation in this area follows the precautionary principle.

ATVOD has taken tough and targeted action aimed at protecting children from hardcore porn videos online and more than 30 UK porn-on-demand video services have been found in breach over the past two years. Non-compliant porn services have been fined up to £100,000 and one pornographer has been barred from providing a service altogether after failing to act as required to put in place the protections required by law.

Whilst taking such vigorous action, ATVOD is acutely aware of the weaknesses of the legal framework. Its statutory powers do not allow it to take action against online services which operate from outside the UK, even when they are freely accessible from within the UK and widely used by UK consumers.

ATVOD therefore commissioned an analysis of research data held by Nielsen Netview in order to throw more light on issues such as:

- The scale of underage access to adult websites
- The extent to which such access involves websites offering free, unrestricted access to hardcore porn videos
- The extent to which such websites are operated from (and therefore regulated in) the UK

In commissioning and publishing this analysis, ATVOD seeks to contribute to the pool of knowledge which has been accumulating about children's use of the internet, their exposure to inappropriate sexual material online, parental concerns about such exposure, and the take up and efficacy of parental control software. In particular, we sought to complement:

- The large scale 'EU Kids Online'¹ research by Sonia Livingstone, Leslie Haddon, Anke Görzig, Kjartan Ólafsson and others. This was primarily funded by the European Commission Safer Internet Programme and involved unique, detailed, face-to-face surveys in homes with 9-16 year old internet users from 25 countries. 25,142 children and their parents were interviewed during 2010. Among other things, the EU Kids Online study found that:
 - 8 per cent of 11-16 year olds reported seeing someone having sex online
 - 2 per cent of 11-16 year olds reported seeing violent sex online
- Ofcom's research 'Children and Parents: Media Use and Attitudes, 2013'². This combines a range of methodologies including 1,689 in-home interviews with parents and children aged 5-15, 685 interviews with parents of children aged 3 - 4, and findings from comScore relating to the top 50 web entities visited by children aged 6 - 14 . The Ofcom study found that:
 - Only 43 per cent of parents have any type of parental controls installed on the PC/ laptop/ netbook that their child uses at home
 - The overall incidence of having controls does not vary by household socio-economic group

¹ See [http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU_per_cent20Kids_per_cent20II_per_cent20\(2009-11\)/EUKidsOnlineIIReports/Final_per_cent20report.pdf](http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU_per_cent20Kids_per_cent20II_per_cent20(2009-11)/EUKidsOnlineIIReports/Final_per_cent20report.pdf)

² See <http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/october-2013/research07Oct2013.pdf>

- 90 per cent of parents with controls installed on the PC/laptop/netbook that the child uses at home agreed with the statement: *"I am confident that the parental controls we have in place are effective"*.
 - 32 percent of children aged 5-15 mainly go online using a device other than a laptop, netbook or PC
 - 18 per cent of 8-11 years old own a smartphone
 - 62 per cent of 12-15 year olds own a smartphone
- The 2013 SIP Bench III³ research into the effectiveness of parental control software. This research is funded by the European Union through the Safer Internet Programme and was prepared for the European Commission Directorate General for Communications Networks, Content and Technology. It tested 13 commonly used parental control systems for PCs/Macs against a sample of 4000 pages (containing text, video and images) considered representative of the content a filtering tool is faced with on the Internet, including both harmful web-pages (that should be blocked by the tool) and non-harmful content (that should not be blocked by the tool). In relation to adult content⁴ it found:
 - The tested tools had underblocking rates of between 9 per cent and 47 per cent in relation to adult content
 - McAfee Family Protection had an underblocking rate of 22 per cent for adult content
 - Mac OS X Parental Controls had an underblocking rate of 21 per cent for adult content
 - Net Nanny had an underblocking rate of 18 per cent for adult content
 - Windows 8 Family Safety had an underblocking rate of 14 per cent for adult content
 - The 2012 Government Consultation on Parental Controls⁵ which found that:
 - 'pornography' was the thing most commonly identified by parents as something harmful they knew their children had been exposed to online

³ See http://sipbench.eu/transfer/study_report_1st_cycle.pdf

⁴ Defined as "Adult sexually explicit content that could impair children's and young adults' sexual development"

⁵ See

http://webarchive.nationalarchives.gov.uk/20130903121526/http://media.education.gov.uk/assets/files/pdf/c/20130122_per_cent20gov_per_cent20response_per_cent20to_per_cent20parental_per_cent20internet_per_cent20controls.pdf

- 'pornography' was the issue that parents most want help with to protect their children online
- The 2012 ATVOD-commissioned ICM Research 'Porn and Hatred Online'⁶. Based on responses from a demographically based sample of 2019 adults in Great Britain, this research revealed that:
 - 77 per cent of British adults think hardcore porn videos are easy for children to see online
 - 88 per cent of British adults think it is important that UK websites offering porn-on-demand are required to take the steps set out in the ATVOD Rules and Guidance – such as restricting access to credit card holders or by checking information against a reliable database, e.g. the electoral roll - to ensure that under 18s do not normally see hardcore porn material
 - Women are particularly concerned, with 94 per cent saying the measures required by ATVOD are very or quite important (with 82 per cent specifically saying they are very important)
 - Overall, 69 per cent of British adults say the measures required by ATVOD are 'very important'
 - Views are broadly the same for adults with or without children

The findings published for the first time in this report are not definitive, but they do provide significant further evidence of the extent to which under 18s are accessing adult material online.

⁶ See <http://www.atvod.co.uk/news-consultations/news-consultationsnews/20121203-porn-and-hatred-online>

4. Methodology

Unless otherwise indicated all figures are from Nielsen Netview.

Nielsen's Netview figures are based on a demographically balanced panel of approximately 45,000 individuals aged 2+ based at home and work. Panel members' offline/online usage is measured by meters installed on panel members' PC's/laptops. Nielsen recruit a large percentage of panel using RDD (random digital dialling) to ensure that the panel is representative and not skewed to heavy online users.

'Adult' sites were defined as sites that contain information, products, and/or services specifically targeting adults such as pornographic pictures & movies, explicit writing, and/or adult web hosting services. ATVOD has confirmed through random sampling of the 1266 'adult' websites visited by panellists that, with rare exceptions (such as Ann Summers), the websites defined as 'adult' provided access to pornographic still images and/or videos; live webcams in which performers offer to carry out live sex acts in exchange for payment; or sexual contact services.

In particular, ATVOD has verified that 23 of the top 25 adult websites (including Pornhub.com) visited by UK internet users provide instant, free and unrestricted access to hardcore pornographic videos and still images featuring explicit images of real sex. The videos were equivalent to, or stronger than, those passed R18 by the British Board of Film Classification for DVD release. R18 DVDs can be sold only to adults who visit a licensed sex shop and cannot be sold by mail order, yet the websites made equivalent (and stronger) material available to any visitor, of any age.

The figures are for UK users during the month of December 2013.

Significantly, the Nielsen Netview figures exclude any visits to adult websites made using a smartphone, tablet or other handheld device.

Where appropriate, the report also includes reference to desk based research conducted by ATVOD, for example to confirm the exact nature and accessibility of the content available on specific websites.

5. Results

Underage usage

The data shows that large numbers of under 18's are visiting adult websites, and that this includes a significant number of under 16's and even under 12's, though sample sizes for the youngest age groups visiting adult websites are relatively small and should be treated with caution. On the other hand, consideration of the significance of the figures should also take into account the fact that, due to technical constraints, the research captures only data in relation to adult websites which had been accessed from a PC or laptop. It therefore excludes any visits made using other internet connected devices.

This is significant: it is worth noting that mobile devices are an increasingly commonplace means of accessing online content, and a route favoured by younger people. According to the 2013 Ofcom Communications Market Report⁷, in February 2013 more than 30 per cent of UK webpage traffic came from mobile phones and tablets. Mobile devices may be even more significant in relation to adult websites (whether operated from the UK or elsewhere): according to 'Pornhub', the adult website with the largest proportion of 12-17 year old UK male visitors, 58 per cent of its traffic from the UK in 2013 was from smartphones or tablets⁸. It is therefore reasonable to assume that the figures set out below significantly underestimate rather than overestimate the numbers of underage UK visitors to adult websites.

The material available on the adult websites commonly features explicit videos and still images of real sex. The material is generally equivalent to, or even stronger than, that classified R18 by the British Board of Film Classification for DVD release. If distributed on a DVD in the UK, such material can only be supplied to adults who visit a licensed sex shop. ATVOD's own analysis of the top 25 adult websites or website groups visited by UK internet users during December 2013 shows that 23 out of 25 provided instant, free and unrestricted access to hardcore pornographic videos⁹ and still images (R18 equivalent or stronger) with no barriers to underage viewing.

The key findings from Nielsen Netview on underage access to adult websites are:

⁷ See http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr13/2013_UK_CMR.pdf

⁸ <http://www.pornhub.com/insights/pornhub-2013-year-in-review/>

⁹ ATVOD defines a 'hardcore pornographic video' as one which is R18-equivalent or beyond R18. R18 DVDs can only be sold in licensed sex shops and feature explicit images of real sex or strong fetish material.

- **44,000 UK children aged 6 - 11¹⁰ visited an adult website from a PC or laptop in December 2013. This represents 1 in 35 children in that age group who went online that month.**

This figure excludes any visits to adult websites which this age group may have made from mobile devices such as smartphones and tablets. Ofcom research¹¹ demonstrates that among 8 – 11 year olds, 18 per cent have their own smartphone; 18 per cent have their own tablet computer; and 30 per cent mostly go online at home using a device other than a PC, laptop or netbook. The figure for this age group accessing adult websites from any device is therefore very likely to be significantly higher than 44,000.

The scale of access by such young children is perhaps explained by the same Ofcom research which reports that 24 per cent of 8 -11 years olds use the internet alone most of the time and that only 51 per cent of parents of 8 - 11 year olds have parental controls installed on the PC, laptop or notebook their child uses at home.

Even when parental controls are installed, underblocking rates for adult content remain significant, running at between nine per cent and 47 per cent according to research funded by the European Commission¹². Well known parental control software products such as McAfee Family Protection and Net Nanny were found to let through respectively 22 per cent and 18 per cent of pages containing “*Adult sexually explicit content that could impair children's and young adults' sexual development*”. The high levels of parental confidence in parental control software - in the Ofcom research 90 per cent of parents with controls installed on the PC/ laptop/netbook that the child uses at home agreed with the statement: “*I am confident that the parental controls we have in place are effective*” – may be misplaced.

- **200,000 UK children aged 6 - 15 visited an adult website from a PC or laptop in December 2013. This represents 1 in 16 children in that age group who went online that month.**

As above, this figure excludes any visits to adult websites which this age group may have made from mobile devices such as smartphones and tablets. Ofcom research¹³ demonstrates that 29 per cent of 5 – 15 years olds (rising to 62 per cent among 12 – 15

¹⁰ These demographics do not meet minimum sample size standards. Measures for these demographics may exhibit large changes month-to-month as a result and should be treated with caution.

¹¹ See <http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/october-2013/research07Oct2013.pdf> , page 42-43

¹² See http://sipbench.eu/transfer/study_report_1st_cycle.pdf

¹³ See <http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/october-2013/research07Oct2013.pdf> , page 45

year olds) have their own smartphone, and 32 per cent of 5 - 15 years olds (rising to 36 per cent among 12 – 15 year olds) mostly go online at home using a device other than a PC, laptop or netbook. The figure for this age group accessing adult websites from any device is therefore most likely to be significantly higher than 200,000.

Again, the scale of access by these children is perhaps explained by the same Ofcom research which reports that 33 per cent of 5 - 15 years olds use the internet alone most of the time, while only 43 per cent of parents of 5 - 15 year olds have parental controls installed on the PC, laptop, or notebook their child uses at home.

The numbers using the internet without supervision or parental control are highest among those aged 12-15. The Ofcom research found that 52 per cent of 12 - 15 year olds mostly use the internet while alone, while just 35 per cent of parents of 12 – 15 year olds have parental controls installed on the PC, laptop, or notebook their child uses at home.

As noted above, even when parental controls are installed, underblocking rates for adult content remain significant, running at between 9 per cent and 47 per cent according to 2013 research funded by the European Commission¹⁴. Well known parental control software products such as McAfee Family Protection and Net Nanny were found to let through respectively 22 per cent and 18 per cent of pages containing “*Adult sexually explicit content that could impair children's and young adults' sexual development*”. The high levels of parental confidence in parental control software - in the Ofcom research 90 per cent of parents with controls installed on the PC/ laptop/netbook that the child uses at home agreed with the statement: “I am confident that the parental controls we have in place are effective” – may be misplaced.

- **473,000 UK children aged 6 - 17 visited an adult website from a PC or laptop in December 2013. This represents 1 in 10 children in that age group who went online that month.**

Once again, it is worth noting that this figure excludes any visits to adult websites which this age group may have made from mobile devices such as smartphones and tablets. The figure for this age group accessing adult websites from any device is therefore likely to be significantly higher than 473,000.

¹⁴ See http://sipbench.eu/transfer/study_report_1st_cycle.pdf

Although parents and policymakers may be most concerned about younger children accessing adult websites, it is clear from the Nielsen Netview data that underage users – especially teenage boys under the age of 18 – form a significant sector in the adult website market:

- **One in 20 (ie 5 per cent) of all UK visitors to adult websites from a PC or laptop in December 2013 were aged 6 - 17.**
- **One in five (20 per cent) of all UK males aged 12 - 17 who went online visited an adult website from a PC or laptop in December 2013¹⁵.**
- **One website alone – Pornhub.com – was visited by 112,000 UK males aged 12 -17 using a PC or laptop in December 2013. Pornhub.com provides instant, free and unrestricted access to thousands of hardcore pornographic videos featuring explicit images of real sex.**

As noted above, these Nielsen Netview figures do not include any visits made using a smartphone, tablet or other handheld device. Pornhub.com, the adult website with the largest proportion of 12 - 17 year old UK male visitors, reports that 58 per cent of its traffic from the UK in 2013 was from smartphones or tablets¹⁶. It is therefore reasonable to assume that the figures relating to 12 - 17 year olds seriously underestimate, rather than overestimate, the number of underage UK visitors.

¹⁵ This is nearly double the rate of access by female the same age - 1 in 9 (11.75 per cent) of UK females aged 12-17 visited an adult website from a PC or laptop in December 2013.

¹⁶ <http://www.pornhub.com/insights/pornhub-2013-year-in-review/>

All UK internet users

Although ATVOD's interest is in protecting under 18's from exposure to hardcore pornography online, the data analysis commissioned from Nielsen Netview by ATVOD includes details of the nature and scale of the overall UK market for online pornography which may be useful in the formulation of public policy initiatives in relation to underage access: understanding the market for such pornographic services is important if policy is to encourage their provision to become more responsible.

The Nielsen Netview data revealed that:

- **9.4m people in the UK accessed an adult website at least once from a PC or laptop in December 2013.**
- **They typically spent 2½ hrs on adult websites over 10 visits during that month – an average of 15 minutes per visit.**
- **UK internet users spent more than 1.4 billion minutes on adult websites in December 2013.**
- **Nearly one in four (23 per cent) of those in UK who went online using a PC or laptop during December 2013 visited an adult website.**
- **Excluding those under two years old, more than one in seven people in the UK accessed an adult website using a PC or laptop in December 2013.**
- **The leading adult website (xHamster) had more than 2.7m unique UK users in December 2013.**
- **The top five adult sites (xHamster, xVideos, Pornhub, YouPorn, RedTube) each had over 2m unique UK users in December 2013.**

The figures do not include any visits made using a smartphone, tablet or other handheld device and are therefore likely to be underestimates rather than overestimates. Even without considering access from mobile devices, the UK is clearly a substantial market for the online adult industry. We discuss in 'Policy Implications' below how the size of the UK market might be used as a tool of public policy aimed at reducing the availability of unrestricted hardcore porn online and thereby reducing the exposure of under 18's to such content.

The adult websites most commonly visited by UK users are 'tube sites'. A 'tube site' is a website which allows users unrestricted free access to large quantities of hardcore pornographic videos which are provided as a 'loss leader' on a 'try before you buy' basis. While viewing the free videos, users of 'tube sites' are encouraged to sign up to 'pay services' offering, for example, higher quality videos or longer videos. Tube site operators also sell advertising space on the website for other services related to the sex industry (such as sexual contact services and live webcams).

The Nielsen Netview figures reveal that for UK internet users accessing the internet via a PC or laptop in December 2013 :

- **The eight most visited adult sites were all free tube sites, as were 15 of the top 16.**

The nature of these adult websites has been verified by ATVOD. As at 19th February 2014, none of the eight most visited adult sites had in place a robust mechanism to prevent underage access and all offered on the home page free access to hardcore porn videos which were equivalent to those passed R18 by the BBFC or stronger. (On a DVD, R18 material can be supplied only to an adult in a licensed sex shop; no-one under 18 is allowed to enter a licensed sex shop and explicit images cannot be displayed in the shop window). None of the eight most visited adult sites had even a warning page.

The websites being visited from UK are not typically subject to regulation in the UK:

- **Only one¹⁷ of the 1,266 adult websites identified by Nielsen Netview as having been visited from the UK in December 2013 was a service regulated in the UK.**

In accordance with the video on demand regulations set out in section 368 of the Communications Act 2003, video on demand services which meet certain criteria are subject to regulation in the UK and are obliged to notify ATVOD. The criteria include that the provider of the service (i.e. the person or entity which has control over the selection and organisation of the programmes) is established in the UK for the purposes of the Audiovisual Media Services Directive. As set out in the 'Background' section above, ATVOD takes vigorous action to ensure that the services it regulates (which include UK based adult websites) have in place robust age verification and access control mechanisms which ensure that under 18's cannot normally see hardcore pornographic material. However,

¹⁷ The ATVOD regulated service was Studio 66. One other (PlayboyTV) had previously been regulated by ATVOD, but is no longer within our jurisdiction. We are not aware of any evidence that any other service in the list of 1266 adult websites identified by Nielsen Netview as having been visited from the UK in December 2013 falls within UK jurisdiction for the purposes of the Audiovisual Media Services Directive.

ATVOD has no power to impose similar requirements on services which are accessible in the UK but operated by a provider established in another jurisdiction.

The policy implications that flow from the fact that most adult websites are based offshore are discussed in the next section.

6. Policy implications

The data from Nielsen Netview demonstrates that:

- There is significant underage access from the UK to adult websites
- The leading adult websites accessed from the UK are unregulated ‘tube sites’ offering free, unrestricted access to hardcore porn videos
- The UK offers a substantial market for the worldwide online adult industry

Harm reduction measures in relation to underage exposure to online pornography should of course include media education initiatives aimed at parents and children. They should also include work to improve the uptake of parental control systems.

However, while we are fully aware of, and support, the recent and ongoing initiatives to achieve more uptake, technical solutions can only ever be part of the solution. As detailed above, Ofcom research shows that only 43 per cent of parents of 5 - 15 year olds have parental controls installed on the PC, laptop, or notebook their child uses at home, while research for the European Commission Safer Internet Programme tested the efficacy of leading software and found underblocking rates of between nine per cent and 47 per cent in relation to adult content. Public policy cannot rely on parental control as a ‘magic bullet’ solution, but should regard it as part of a package of measures designed to reduce the availability of online pornography to children.

Our view is that the range of policy initiatives should be expanded and there must be a focus on those who make hardcore pornography available online. ATVOD considers that those who provide ‘adult’ content have a responsibility to ensure that those who access it are at least 18. We therefore take the view that public policy should, at least in part, encourage such providers – wherever they are based - to act responsibly by putting in place robust age verification and access control mechanisms. As the internet crosses borders with ease, the policy responses will need to be tailored according to whether the website is being provided from within the UK, the EU or the rest of the world, and should recognise that UK-based services are a relatively small (but not insignificant) part of a larger problem.

How can online pornographers be persuaded to behave more responsibly?

It depends where the service is provided from:

UK based providers are already regulated by ATVOD under the Audiovisual Media Services Directive (“the AVMS Directive”) which was implemented in the UK through amendments to

the Communications Act 2003. UK based providers are required to keep hardcore porn out of reach of children on the grounds that it “*might seriously impair*” their development. ATVOD’s judgement that hardcore porn might seriously impair under 18s is not universally shared and relies on the application of the precautionary principle, as conclusive evidence either way is, and is likely to remain, lacking for ethical reasons. ATVOD takes robust action in this area and failure to protect children has resulted in UK services being fined or even closed. But ATVOD currently has no power to prohibit, even on regulated video on demand services, material which would be refused an R18 classification and which therefore could not lawfully be supplied on a DVD in the UK.

ATVOD has therefore welcomed the commitment expressed by Government in the DCMS strategy paper “Connectivity, Content and Consumers” published in July 2013:

“R18 content on video-on-demand As on-demand services become increasingly prevalent we want to make sure that regulation of on-demand content is as robust as regulation of content on a DVD, bringing the online world into line with the high street.

We will legislate to ensure that material that would be rated R18 by the British Board of Film Classification is put behind access controls on regulated services and we will ban outright content on regulated services that is illegal even in licensed sex shops.”

We believe that the research data published in this report justifies urgent implementation of this strategy. The promised legislation will certainly strengthen ATVOD’s hand in dealing with adult services operating from the UK and we think it is critical that the legislation is enacted during this Parliament. ATVOD provided DCMS officials in September 2013 with a detailed proposal for putting into practice the Government commitment.

EU based providers are regulated under the same AVMS Directive, but as some other Member States do not consider that hardcore porn “*might seriously impair*” under 18s, they do not impose restrictions such as those required by ATVOD in the UK. These means that online services based in, for example, The Netherlands, can and do target the UK and provide unrestricted access to hardcore pornography. ATVOD has called for the AVMS Directive to be amended to require all Member States to ensure that media services within their jurisdiction keep hardcore porn out of reach of children. Such a move would require all other Member States to mirror the action already taken by ATVOD in the UK. It is important that UK Government helps drive the call for change.

Non-EU based providers are often completely unregulated. The leading pornographic businesses make their content available in two ways – by offering access to those who pay

for a subscription and by providing free clips, including on so-called 'tube sites' (such as PornHub), which act as shop windows to promote the core subscription based services. The 'tube sites' are open to everyone, without any form of registration or identity or age verification, and unsurprisingly are the key means by which UK children are likely to access hardcore porn. They often feature in the top 50 websites being accessed from the UK.

As the provision of free unrestricted hardcore porn is designed to generate revenue through associated pay services, policy in relation to non-EU based providers should 'follow the money'. It is clear that significant sums are flowing from UK customers to foreign websites which allow children to access hardcore porn. In 2013, *The Times* estimated the sum could be £180 million a year. Cutting off that flow of funds to services which allow children to view hardcore porn would provide a powerful incentive for porn websites to put in place effective age verification and access control mechanisms in order to restart the flow of funds from the UK. It would not affect the free services directly – because by definition they do not charge users – but it would undermine the business model on which they depend. Deprived of the money which flows to the underlying pay sites, the tube sites simply could not exist.

ATVOD has therefore been working with the UK payments industry – including Visa Europe, MasterCard, PayPal, the British Bankers' Association, the Payments Council and the UK Cards Association - to consider how that flow of funds might be cut-off, and a draft process has been designed. In the course of those discussions, the payments industry has made clear that, despite Crown Prosecution Service advice that foreign websites may be in breach of the Obscene Publications Act ("the OPA") if they provide unrestricted access to hardcore ("R18") pornography, the absence of clear case law on the issue means the OPA does not provide sufficient certainty for them to act without fear of legal challenge (no relevant prosecutions appear to have been brought since the Crown Prosecution Service guidance was first published in 2005). In the absence of such clear case law, fresh legislation would be required.

One option would be to mirror the licensing requirements being introduced for foreign (ie non EU) online gambling services. It may be possible to establish a similar licensing regime for foreign (ie non-EU) porn websites whose services are being used the UK. A condition of such a licence could be that hardcore porn material could only be provided if such provision occurred in a manner which secured that under 18's could not normally access the material. Payments could then be prevented to unlicensed services or to licensed services which breached the licence conditions.

In any event, the only obstacle at present is the lack of statutory underpinning.

7. Recommendations

In order to enhance the protection of children against exposure to hardcore porn online, ATVOD recommends that:

- UK Government act to provide the statutory underpinning necessary for the UK payments industry to act, without fear of legal challenge, to prevent payments flowing from the UK to online services which allow under 18's to access hardcore pornography.
- UK Government work to secure changes to the Audiovisual Media Services Directive to require all Member States to ensure that media services within their jurisdiction keep hardcore porn out of reach of children (thereby mirroring the action taken by ATVOD in the UK). In the shorter term, UK Government should work with fellow Member States to seek agreement on UK-style child protection measures, where these are not already in place.
- UK Government enact during this Parliament the legislation promised in the DCMS strategy paper "Connectivity, Content and Consumers" published in July 2013. Such legislation would remove any doubt that material that would be rated R18 by the British Board of Film Classification must be put behind access controls on regulated services.

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