



TO: Ofcom

FROM: Common Sense Media

DATE: 4 October, 2024

RE: [Consultation](#): Online Safety Act Transparency Reporting

CONFIDENTIALITY:

Per Ofcom's consultation response form, the whole response below is not confidential. Responses may be attributed to Common Sense Media.

Point of contact: Holly Grosshans, Senior Counsel, Tech Policy

RESPONSE:

Common Sense Media is the leading nonprofit organisation working on behalf of children and teens to make their world healthier, safer, and more equitable. Backed by the research that's the foundation of everything we do, we champion quality media that entertains and inspires, and support legislation that aims to close the digital divide and hold social media platforms accountable. We encourage students and educators to think critically about technology and become responsible digital citizens. And we safeguard children's health and well-being by protecting their data privacy and reducing potential online harms.

We are pleased to submit these comments in response to Ofcom's Online Safety Act Transparency Reporting Consultation. Common Sense supports Ofcom's efforts to protect children's safety while ensuring their privacy, and we offer constructive suggestions to achieve this balance below.

More specifically, our responses to the consultation:

- Highlight proposed legislation and bills under active consideration in the U.S. that include transparency reporting provisions,
- Demonstrate how transparency reporting is helpful in making the online world healthier and safer for kids.

Question 1:

- A) Ofcom's powers and providers' duties for transparency reporting, as well as Ofcom's approach to implementing the transparency regime.
- B) Ofcom's approach for determining what information service providers should produce in their transparency reports.
- C) Ofcom's plans to engage with providers prior to issuing transparency notices, and on what matters, and whether the proposed engagement plan will be sufficient for helping services to comply with their duties.
- D) Ofcom's plans to use the information in providers' transparency reports in Ofcom's own transparency reports

Transparency reporting is a growing hot topic as it relates to privacy and children's use of online sites. Currently, there are multiple proposed bills and active laws that include transparency reporting provisions at both the federal and state level.

Kids Online Safety Act (KOSA): The proposed KOSA bills, as overwhelmingly passed by the U.S. Senate by a vote of 91-3 on July 30, 2024 (S. 2073) and the version under consideration by the U.S. House of Representatives that was approved by the House Energy and Commerce Committee on September 18th (HR 7891), set out requirements to protect minors from online harms. Specifically, KOSA would require online platforms to “undergo independent, third-party audits and issue public transparency reports detailing foreseeable risks to minors, as well as the prevention and mitigation efforts they have taken to address these harms”.¹ KOSA would achieve this transparency through public reporting, not less than once a year, of these independent third-party audits for covered platforms. The reports are required to include detailed information as to the extent to which a covered platform is to be accessed by minors, the commercial interests of the covered platform in use by minors, the total number of reports received regarding content related to harms identified in KOSA, any breeches or non-compliance of the act, and the data held by the covered platform including the number of users the covered platform knows to be minors, the amount of time spent by minors on the platform broken down into minors that accessed the platform daily, weekly, and monthly.²

The California Age Appropriate Design Code Act (CA AADC): The CA AADC, which was based on the United Kingdom's AADC, applies to all for-profit businesses that “collect consumers' personal information and satisfy the requirements of a business as defined in the California Consumer Privacy Act (CCPA)”. The CA AADC provides requirements to these businesses that “provide an online service, product, or feature likely to be accessed by children.” The CA AADC

¹ Lee, Yena. “The Kids Online Safety Act (KOSA) Explained: What the Drafted Bill Could Mean for Online Child Safety.” Thorn, 20 Mar. 2024, www.thorn.org/blog/the-kids-online-safety-act-kosa-explained/.

² House Bill 7891 as reported at <https://www.congress.gov/bills/118th-congress/house-bill/7891/text#toc-H2D74569C1FD341409321A42E2A4B6865>

includes a Data Protection Impact Assessment (DPIA) as a part of its transparency requirement. This DPIA is a survey that requires covered companies to assess and mitigate risks arising from the business's data management practices for children, when children are reasonably likely to access the online service product or feature. The CA AADC requires that applicable businesses must "provide³ privacy information, terms of service, policies, and community standards concisely, prominently, and using clear language suited to the age of children likely to access that online service, product, or feature".⁴

Maryland Kids Code: This new law, as of October 1, 2024, modelled after the CA AADC, is intended to safeguard children's online privacy and provide protections to children under the age of 18 – current federal privacy law, COPPA, only protects children under 13. This state code "emerged in response to several concerns about children's privacy, such as online surveillance, excessive data collection, data monetization, and addiction to online services and products".⁵ The Maryland Kids Code instils privacy, by default, into design features by requiring "online products and services reasonably likely to be accessed by children and teens under 18 to be age appropriate".⁶ The Code requires Data Impact Protection Assessments (DPIA) for applicable companies, clear notices to kids that they can understand, accessible tools for children (or parents/guardians) to exercise privacy rights, and the default privacy setting for kids being the highest setting.⁷ If a company's DPIA finds one of their design features - like autoplay or endless scroll - is not consistent with the best interests of children, the company must implement a plan to mitigate or eliminate the harm.

³ The CA AADC was enjoined in *NetChoice v. Bonta* (9th Circuit Court of Appeals Case No. 23-2969), the Court of Appeals has ruled that NetChoice is likely to succeed in showing the CA AADC DPIA requirement violates the First Amendment.

⁴ *The California Age-Appropriate Design Code Act.*, [leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2273](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2273).

⁵ Stacy-Ann Elvy, Opinion Contributor. "States Are Protecting Children's Online Privacy, but Congress Still Needs to Act." *The Hill*, The Hill, 20 May 2024, thehill.com/opinion/technology/4674772-states-are-protecting-childrens-online-privacy-but-congress-still-needs-to-act/.

⁶ *Maryland Kids Code*, 13 May 2024, marylandkidscode.com/#:~:text=Kids%20and%20teens%20deserve%20online,in%20California%20and%20now%20Maryland.

⁷ "Maryland: What Businesses Need to Know about the Maryland Kids Code." *DataGuidance*, 14 June 2024, www.dataguidance.com/opinion/maryland-what-businesses-need-know-about-maryland.

Question 8: Beyond the requirements of the Act, are there any forms of insight that it would be useful for Ofcom to include in our own transparency reports? Why would that information be useful and how could you or a third party use it?

The Kids Online Safety Act (KOSA) would require covered online platforms to “undergo independent, third-party audits and issue public transparency reports detailing foreseeable risks to minors”.

In addition to these third-party audits, KOSA requires companies to design their platforms to prioritise children and teens' health and well-being over engagement and profits. Covered platforms would have a ‘*duty of care*’ to prevent or mitigate harms posed by the platform and offer parents and minors safeguards and tools, like strong default privacy settings. Importantly to this consultation, KOSA requires greater transparency about how online platforms operate. It does this by requiring these platforms to publicise their own prevention and mitigation efforts that they have taken to prevent online harm.⁸

The transparency reports required under KOSA would detail foreseeable risks while also detailing the prevention and mitigation efforts being utilised to prevent online harm. This is helpful information that Common Sense and other third parties can benefit from. A critical part of KOSA is that creates a duty for these online platforms to prevent and mitigate specific dangers to minors, including promotion of suicide, eating disorders, substance abuse, sexual exploitation, and advertisements for certain illegal products”, such as tobacco or alcohol.⁹ KOSA also outlines a “dedicated channel to report harmful behaviours” for parents and educators.¹⁰ Together, this information can be utilised to ensure that online platforms are prioritising children’s safety online and that third parties can hold these platforms accountable. Lastly, KOSA will work to ensure “that parents and policymakers know whether online platforms are taking meaningful steps to address risks to kids by requiring independent audits and research into how these platforms impact the well-being of kids and teens”.¹¹ All of these factors of KOSA work together to advocate for minor’s safety and privacy online. By Ofcom including these factors in their own transparency reports, children’s safety can be of the utmost importance online.

⁸ Lee, Yena. “The Kids Online Safety Act (KOSA) Explained: What the Drafted Bill Could Mean for Online Child Safety.” Thorn, 20 Mar. 2024, www.thorn.org/blog/the-kids-online-safety-act-kosa-explained/.

⁹ “Senate Overwhelmingly Passes Children’s Online Privacy Legislation.” *U.S. Senate Committee on Commerce, Science, & Transportation*, 30 July 2024, www.commerce.senate.gov/2024/7/senate-overwhelmingly-passes-children-s-online-privacy-legislation#:~:text=Today%2C%20the%20U.S.%20Senate%20overwhelmingly,protect%20children%20and%20teens%20online.

¹⁰ *Id.*

¹¹ *Id.*

Conclusion

Common Sense Media believes that meaningful regulation is critical to our broader mission of protecting children in the digital world. Moreover, strong global collaboration among regulators, civil society, and the tech industry is particularly key to addressing common pain points and can help to enforce child safety policies. To that end, we applaud Ofcom's global engagement, its regulatory progress to date, and the investment in ample resources to help address these complex challenges.

Common Sense is grateful for the opportunity to respond to Online Safety Act Transparency Reporting Consultation. As a trusted global brand for children and families, we look forward to helping bring American and global perspectives to consideration as Ofcom develops essential regulatory guidance, standards, and tools to improve children's lives around the world.

About Common Sense Media UK

Common Sense is an independent nonprofit organisation dedicated to helping children thrive in a rapidly changing world. The organisation is based in San Francisco with regional offices across the U.S. We launched our first international office in the UK in 2019, a registered charity (also Common Sense Media, 1188840), through which we rate, educate, investigate, and advocate for the safety, privacy, and well-being of children in the UK and globally.

Common Sense Media achieves its aim to create a more healthy, equitable, and empowering future for children in the following ways:

RATE: Through our U.S. based parent platform, Common Sense Media, we provide independent ratings and reviews of various forms of media.

EDUCATE: Through Common Sense Education, we share our Digital Citizenship curriculum with millions of teachers across the world to increase media literacy and shape digital citizens, as well as offer tips to families and communities as they navigate media and technology.

ADVOCATE: We advocate and raise awareness to drive policy and industry changes that protect the safety, wellbeing, and privacy of children in the digital world, including the UK, EU, and USA.

INVESTIGATE: Our team conducts independent research to provide parents and caregivers, educators, health organisations, and policymakers with reliable, independent data on young people's use of media and technology and its impact on their physical, emotional, social, and intellectual development.

For more information, visit <https://www.commonsense.org/>.