Question	Your response
We welcome input from industry on the areas listed below. We encourage stakeholders to respond with feedback so that we can ensure that the guidance helps providers and other stakeholders understand:	
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.	Confidential? – No The Global Network Initiative (GNI) appreciates Ofcom's efforts to develop transparency reporting guidelines under the UK's Online Safety Act, as well as the associated principles that will determine the scope of the regulator's transparency powers. GNI has been a steadfast supporter of proportional and necessary transparency reporting frameworks that help enhance user empowerment, information integrity, and corporate accountability on human rights. For over fifteen years, GNI has been encouraging technology companies to improve transparency around actions that impact user privacy and freedom of expression. As such, we have consulted with various stakeholder groups to produce a breadth of resources, including the Country Legal Framework Reports to provide contextual information on surveillance and censorship laws that apply to tech companies in different jurisdictions, the Action Coalition on Meaningful Transparency (ACT) in collaboration with Brainbox Institute, as well as a Transparency Initiatives Portal under the ACT, which is a community-driven resource for tracking work on tech transparency around the world. GNI intends these resources to help companies and regulators better understand the obligations and best practices linked with effective and rights-respecting transparency reporting practices. GNI values Ofcom's pursuit of transparency reporting within its broader online safety regime to improve safety governance and empower UK users to make more informed choices about the services that they use. We

also appreciate the intention to structure the format of the transparency notice and information requested therein in a way that improves comparability between transparency reports over time and across jurisdictions and covered services. Nevertheless, we are concerned about the extent of ambiguity surrounding the types of services that will fall under the categories of 1, 2A, and 2B services.

The categorization of services that will undergo mandatory transparency reporting under the OSA is essential to effectively assess the transparency regime that Ofcom will oversee. The guidance provided in this consultation states that Ofcom will take into consideration, among other things, the type, functionality, number of users, proportion of users who are children, and the capacity of the service provider in respect of each transparency notice it issues. While this is a good initial set of conditions, it is also important for Ofcom to consider not only user numbers or revenue figures as relevant criteria for distinguishing services but also the types of risks involved and the services' ability to mitigate them. This includes the acknowledgment of the purpose and business model of a service, such as those created for not-for-profit or academic purposes, depending on which, a service may receive a high volume of visitors without generating the same type of revenue as commercial services. In addition, it is important to acknowledge that the use of encryption to support users' privacy and security can impact a service's ability to access and take action regarding user generated content. Companies should not be punished directly or indirectly for deploying encryption to protect their users rights. It is important for Ofcom to define these categories of services as early as possible as it affects not just how companies fit within the transparency reporting framework but the overall architecture of the UK's online safety regime.

| | Separately, GNI previously [recommended](#) in the Child Codes consultation that Ofcom "reconsider [its approach to children's access assessments] and provide greater clarity as to how a service can determine whether a 'significant number of children' are accessing or are likely to be attracted to a service. This is because the approach set out to determine what constitutes a 'significant number' of children makes it very difficult, if not impossible, to credibly determine that the 'child user condition' is not met." Until the outcome of the previous consultation has been determined, Ofcom should not include the proportion of child users in a service as a condition for determining the substance of its transparency notices, as the provision presupposes *what*, and *if* there should be a mechanism to identify the number of child users in a service.

Furthermore, given the size, scope, and complexity of the regulation, we encourage Ofcom to try and harmonize its transparency guidelines as much as possible with other national/regional level regulations such as the Digital Services Act (DSA) in the European Union (EU) to avoid conflicting standards and excessive compliance costs for lower risk services. While transparency reporting serves a crucial purpose in promoting accountability and understanding of how platforms operate, it is essential to recognize that these mandates represent a form of compelled speech, albeit one that is often legitimate. Therefore, any transparency requirements must be carefully crafted to ensure that they are clear, unambiguous, necessary, and proportionate to the public interest they seek to serve. For this purpose, GNI's [feedback](#) on the proposed qualitative and quantitative transparency reporting templates under the EU's DSA can help provide additional guidance. GNI believes that company transparency practices can be significantly improved if different transparency reporting frameworks can ensure a degree of consistency in terms of the format, metrics, and |
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| | types of information being requested, so that reports can easily be studied by various stakeholder groups and compared across jurisdictions over time. We also believe that there are opportunities for improved harmonization with increasingly well established international reporting standards, such as the European Sustainability Reporting Standards, Global Reporting Initiative, and International Sustainability Standards Board.

Additionally, while GNI appreciates Ofcom's plans to use the transparency reports provided by services to develop their own transparency report, we reiterate the importance of providing more clarity on whether and when transparency reports from services will be made public, either by the services that conduct them or by Ofcom. In particular, transparency with respect to risk assessments would help academics, civil society organizations, and users better understand how services are addressing such risks, and allow them to hold Ofcom accountable for its regulatory obligations.

Finally, it is not clear from the consultation material whether Ofcom will disclose the nature and scope of information notices to providers, including any requests made via priority escalation channels. We encourage Ofcom to model transparency in its own regulatory efforts and ensure that as much information as possible about such notices is made public. |
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| Are there any aspects in the draft guidance where it would be helpful for additional detail or clarity to be provided? | Confidential? – No

Following Schedule 8 of the Online Safety Act, Ofcom may require services to provide information about the formulation, development, scope, and application of their terms of service. The OSA identifies 15 different categories of illegal content, and under the broader framework of the Act, there are further mandatory risk assessments and children's access assessments that services have to |

undergo. We are concerned that this could result in some service providers having an overly burdensome and restrictive mandate to comply with various measures in relation to transparency and content moderation practices, in addition to their own terms of use and service.

Moreover, what is illegal can often vary between countries, whereas services often try to design their terms of use policies in a way that helps set a consistent, global approach. While there may be a large overlap between content that could go against company policies and content that violates UK law, company policies are neither intended to nor could they match every country's law, and the imposition of one country's standard for illegality at a global scale may create inconsistency, if not conflict, with another country's. Ofcom does not clarify in these guidelines what the expected outcome would be in a situation where companies' terms of use conflicts with a requirement or provision under the OSA.

In a previous [submission](#) to the House of Lords, GNI encouraged lawmakers to avoid broadening the scope of priority illegal content on the Online Safety Bill based on the risks to freedom of expression this would create. Ofcom has grouped 130 illegal harms into 15 groups of illegal harm, including hate crime, drugs, terrorism, immigration, intimate image abuse, and fraud. The UK's approach to these "harms" is likely to be more restrictive than local laws on certain content issues, which creates a general risk of overbroad and/or extraterritorial removal of content that may otherwise be protected under international or domestic law.

Also under Schedule 8, Ofcom may require services to provide information on any kind of cooperation with the government, regulatory or other public sector bodies in the UK as part of the transparency reporting process. While Ofcom has yet to clearly outline what type of

	information, and in what form, can be requested from services regarding their cooperation with public authorities, GNI recommends that companies be given the opportunity to share both qualitative and quantitative information in order to be able to effectively and contextually explain their measures and ways of assessing government demands. The GNI [Principles on Freedom of Expression and Privacy](#) and their accompanying [Implementation Guidelines](#) have been guiding our company members and used as a reference by many other intermediaries for over fifteen years. They set forth a framework that encourages companies and intermediaries to consider a broad range of responses to government demands ranging from full compliance to legal challenges where those demands appear to contradict relevant laws. GNI has provided additional [guidance](#) regarding transparency reporting related to government demands in its response to the European Commission's consultation on the transparency reporting templates under the DSA, where we explain how, if not implemented correctly, this requirement to report cooperation or compliance with government demands can lead to significant and unequal burden on various types of services.
Are the suggested engagement activities set out in the draft guidance sufficient for providers to understand their duties and Ofcom's expectations?	

Question	Your response
We are also seeking input that will help us understand if there are other matters that Ofcom should consider in our approach to determining the notices, beyond those that we set out in the guidance. The questions below seek input about any additional factors Ofcom should take into account in various stages of the process, including: to inform the content of transparency notices; in determining the format of providers' transparency reports; and how the capacity of a provider can be best determined and evidenced.	
Are there any other factors that Ofcom might consider in our approach to determining the	

contents of notices that are not set out in the draft guidance?	
Is there anything that Ofcom should have regard to (other than the factors discussed in the draft guidance) that may be relevant to the production of provider transparency reports? This might include factors that we should consider when deciding how much time to give providers to publish their transparency reports.	Confidential? – No Please see our response to Question 1.
What are the anticipated dependencies for producing transparency reports including in relation to any internal administrative processes and governance which may affect the timelines for producing reports? What information would be most useful for Ofcom to consider when assessing a provider's "capacity", by which we mean, the financial resources of the provider, and the level of technical expertise which is available to the service provider given its size and financial resources?	
Are there any matters within Schedule 8, Parts 1 and 2 of Act that may pose risks relating to confidentiality or commercial sensitivity as regards service providers, services or service users if published?	Confidential? - No Given the sensitive nature of many online risks which platforms manage, Ofcom should be very clear on retaining the confidentiality of the statements of responsibilities and of the related names.

Question	Your response
Finally, we are also seeking input into any matter that may be helpful for ensuring Ofcom's transparency reports are useful and accessible.	
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?	
Do you have any comment on the most useful format(s) of services' transparency reports or Ofcom's transparency reports? How can Ofcom ensure that its own transparency reports are accessible? Provide specific evidence, if	

possible, of which formats are particularly effective for which audiences.	

Question	Your response
Please provide any other comments you may have.	
General comments	

Please complete this form in full and return to OS-Transparency@Ofcom.org.uk