

Consultation response form

Your response

Question	Your response
<p>Question 1: Do you have any comments on Ofcom's proposed Plan of Work 2023/24?</p>	<p><i>Is this response confidential? – No</i></p> <p>2.22 Video Sharing Platforms.</p> <p>Ofcom became responsible for enforcing the updated requirements of the Audio-Visual Media Services Directive in November 2020. It was therefore confusing to read in October 2022 that you were setting out your “priorities for the second year”. This is now the third year of your responsibility to implement this regulation.</p> <p>You state you will focus in Year 3 on “Driving the implementation of robust age assurance to protect children from the most harmful online content, including pornography.” We believe this an action more suited to Year 1 than Year 3 but welcome this focus.</p> <p>We also strongly welcome the opening of a 4 month enforcement programme in this area. And we trust that the obvious failures to comply with the current legislation by some notified VSPs will lead to investigations and enforcement action.</p> <p>We hope this shows Ofcom accept it is no longer tenable to delay enforcement of the VSP regime to align it with the new Online Safety Regime. We know that under the current roadmap, this would not be until 2025 at the earliest, and at this point you would only begin your phases of regulatory activity, not move directly to enforcement. Indeed, the timeline to reach the enforcement stage under the VSP regime is the main evidence for our concerns about how long it will be before the Online Safety Bill is actively enforced. Extrapolating based on the record for VSP (which was also under 20 sites, not the millions covered by the new Bill) suggests 2027 could be the first time</p>

an enforcement notice reaches a website. We hope we are wrong about this.

The cost of applying age assurance has fallen rapidly, both through growing competition in the traditional age verification market, and the emergence of age estimation solutions. Higher success rates are available as the range of methods of age assurance has grown and accuracy, particularly of the popular consumer choice of age estimation, has improved. Enforcing the law on VSPs should no longer be delayed by misplaced fears of cost and customer attrition.

Online Safety

The published roadmap rightly priorities CSAM and terrorism content but we are concerned it is under-ambitious when it comes to other priority harms. The passing of the Online Safety Bill will create a significant public expectation that the internet will become safer, yet the timeline suggests there will be little real-world impact before 2025, and in fact, given the regulatory phases you adopt, it may be much later still.

We are also concerned that the scale of the task means Ofcom will need significantly to change its style of enforcement. Working with 5 million adult websites to persuade them to comply, as you so successfully did with OnlyFans under the VSP regime, is not going to work. You will need mechanisms to deliver enforcement at scale. We suggested amendments in the Commons Committee Stage to clarify that Ofcom could present courts with a schedule of non-compliant sites, and will seek to re-propose these in the Lords to give you the unambiguous powers you will need to deal with such an enormous market.

It is also critical that adult sites are faced with a level-playing field. We have seen in France and Germany how the handful of sites singled out for enforcement action are forced to fight compliance at every stage because for them to comply when others do not is an existential threat to their business. They will just lose all their traffic overnight.

We do not agree with the rationale in the roadmap to delay the enforcement of Part 5 on provider produced content artificially to align it with Part 3. There is a complex critical path of secondary legislation that delays Part 3 which does not apply to Part 5 at all. Ofcom can move ahead with this Part quickly, and address all the sites with provider produced content. We argue that this includes the major “tube” sites as only approved agents of these sites are able to upload videos. The general public cannot do so, so they do no host user-to-user content.

To leave access to porn by children unfettered until 2025 or, in all likelihood later is politically indefensible. Government will argue it has done its part in legislating and Ofcom will inevitably face criticism for the delay. But the legislation allows for early action on this through Part 5 and this is a good opportunity for a quick win, and one which lays the foundation for the adoption of age assurance more widely, not just in the adult sector.

The argument that sites would need to prepare for one regime and then another does not stand up because both regimes will undoubtedly include the self-same requirement to ensure children cannot normally access pornography online. It is merely a matter of timing.

Sites confused as to whether they fall under Part 5 can simply remove pornography until the Part 3 regime comes into force. Ofcom does not owe any duty to treat sites equally – legislation is often phased in affecting different sectors sooner than others.

All the major adult sites have been ready for age verification since at least 2019, under Part 3 of the Digital Economy Act. The major sites turned it on with ten days’ notice in France. Similarly, since the start of 2023, sites have applied age checks in Louisiana, USA.

This is a quick win for government, for Ofcom and of course for children. Parliament may in the end set a deadline to enforce this aspect of

the new regime, but we are sure this is more than deliverable.

We are working on the standards, audit processes and certification (under UKAS) required to make enforcement straightforward through effective coregulation. These will all be in place in very good time to allow you enforce age restrictions for adult content during 2023/24.