Your response

Executive summary

Google recognises the need to design an effective fees regime to cover the cost of Ofcom's regulatory oversight under the Online Safety Act (OSA). This is fundamental to ensuring the online safety regime operates effectively, and we are grateful for the opportunity to engage constructively on Ofcom's proposals for the fees and penalties regime.

We set out our response to specific points in this consultation below. However, we would like to reiterate the points raised in Google's response to Ofcom's initial consultation on the fees and penalties regime dated 6 February 2025[1], the majority of which have not yet been adequately addressed. In particular:

- We maintain the view that the definition of Qualifying Worldwide Revenue (QWR) should be calculated by reference to revenue referable to the UK (i.e. the "UK revenue approach"). Given the scope of the Act's obligations on service providers and the purpose for which Ofcom was given its powers it is inappropriate for fees to be calculated by reference to revenue generated by non-UK users (who are subject to different regulatory regimes and related fees).

- We also consider that the only revenue taken into account when calculating QWR for penalties should be that generated by the regulated service in respect of which there is a breach. It is unfair to impose a penalty on a service provider based on revenue attributable to a regulated service that has no connection with the breach, in particular given the potentially significant scale of penalties that can be imposed under the OSA.

- More broadly, we strongly consider that QWR should be service specific and not amalgamated across different services - whether for the purposes of the QWR threshold for fees or in relation to penalties.

- Furthermore, revenue that is not referable to regulated services should be excluded from QWR where there is joint and several liability for a breach. Ofcom's regulatory oversight under the Act extends only to regulated services and the purpose of the fees regime is to fund the cost of that regulation. Ofcom's aims of generating a deterrent effect, ensuring consistency and taking

[1] See Google's response here.

a straightforward approach to the calculation can all be achieved without needing to take this irrelevant revenue into account: as such, it is also, at the very least, disproportionate to consider this revenue. QWR in this instance should therefore be calculated by reference to regulated services only.

- Finally, Ofcom should be required to set out, in advance of each charging year, a detailed breakdown of their proposed spend for the year, and the associated predicted overall cost. Without these guardrails built into the system, there may be concerns around how Ofcom is adhering to its public law obligations to act transparently and fairly, guarding against over-estimating its potential spend, and subsequently spending a greater amount than may be necessary.

We provide the below responses in addition to, and to supplement, our previous submission.

Question	Your response
Consultation question 1: Do you have any comments on the proposed guiding principles? Do you consider these guiding principles to be appropriate and sufficient to guide calculation (and verification) of QWR? If not, what changes or additions would you recommend and why? Where applicable, please provide evidence to support your responses.	N/A

Consultation question 2: Do you have any comments on the proposed range of apportionment methods? Do you consider these apportionment methods to enable consistent application of 'just and reasonable' apportionment whilst accommodating a provider's individual circumstances and business model? If not, what additional methods or changes would you recommend and why? Please provide evidence to support your responses.	**Apportionment methods** **First**, we welcome Ofcom's recognition that, where apportionment is required, a number of methods could be applied and it is not appropriate or practicable for Ofcom to prescribe exactly how individual providers should apportion revenue (para 80, Guidance). The Guidance then sets out a non-exhaustive list of possible apportionment methods. However, the Guidance currently provides that the order the methods are set out in the table (namely, usage-based; advertising-based; cost-based; and existing apportionments) represent what Ofcom broadly expects providers to follow in considering and selecting a just and reasonable method of apportionment. We appreciate that Ofcom has also recognised that providers will have different business models and data available on which to base apportionment which could justify selecting one method over another that differs from the order set out in Table 1.4 (paragraph 85, Guidance). We recommend that the sentence which suggests that Table 1.4 is in order of preference of apportionment methods is removed from the Guidance to make clear that providers are permitted to adopt whichever method is most suitable, as long as it constitutes a just and reasonable approach (in line with the requirements in the Online Safety Act 2023 (Qualifying Worldwide Revenue) Regulations 2025 (the "**QWR Regulations**"). As Ofcom recognises at paragraph 85, providers have different business models and data available which may justify selecting one method over another that differs from the order set out in the table. Given the differences in quality of data that providers may have, and the fact that the QWR Regulations do not prescribe a particular method of apportionment over others, we recommend that providers are expressly permitted to adopt the apportionment method that is most appropriate for them. **Second**, we are concerned that Case Study 7 at page 23 of the draft Guidance does not align with the statutory test for determining which revenue should be included in a provider's QWR. The QWR Regulations set out that, for the purposes of Part 6 of the OSA, QWR is the total amount of revenue the provider receives during the qualifying period that is "referable" to the regulated service (para 6(2) QWR Regulations). Revenue is "referable" to the regulated service if it arises in connection with provision of the relevant parts of a regulated service (i.e. the parts where regulated user-generated content ("**rUGC**") and / or search content may be encountered).

	Case Study 7, as currently drafted, appears to apply a different, broader test than the test set out in the QWR Regulations by tying QWR to revenue earned from services that a provider provides on a user-to-user transaction. The conclusion that Ofcom draws as a result of connecting referable revenue to the transaction in this way is that all fees generated from transactions, including fees relating to listing, handling, shipping and currency conversion, may be included in QWR. This approach goes further than the test set out in the QWR Regulations. Service providers should be able to determine in respect of each type of fee whether it satisfies the relevant definition of referable revenue in paragraph 4 of the QWR Regulations. For example, in some instances a service may collect fees generated by a transaction that do not arise in connection with the provision of the relevant parts of the service. In particular, revenue generated from fees such as shipping fees should not necessarily be included in the calculation of QWR, as the delivery of an item is not connected to the part of the service on which rUGC / search content may be encountered, but is connected to the physical (i.e. offline) delivery of the item purchased on the platform. To ensure Case Study 7 is consistent with the QWR Regulations, we request that Ofcom reframes the case study to make it clear that the only revenue that is relevant for the purposes of QWR is that which arises in connection with the part of the service on which rUGC and / or search content may be encountered. **Ofcom's estimation of service providers' QWR** At paragraphs 116 and 117 of the draft Guidance, Ofcom notes that it may use various methods to assess and verify the QWR which has been submitted by a provider for either fees or penalties purposes. For example, Ofcom sets out that it may use benchmarking based on the revenues of comparator standalone regulated services with similar functionality and quality in the market. While this may be a reasonable approach in circumstances where a provider has failed to submit its QWR in response to a fees notice or information request, we do not consider that this is proportionate where Ofcom is trying to "assess and verify" the information that a provider has given Ofcom about its QWR. There is a risk that Ofcom's approach to estimating QWR results in an inaccurate assessment of a service provider's QWR, particularly where Ofcom adopts a benchmarking approach. In circumstances where Ofcom considers that it might be necessary to assess and verify the QWR submitted by a provider, we recommend that Ofcom commits to

	engaging with the provider in the first instance to ask for further information. Ofcom should only attempt to estimate QWR in circumstances where the relevant provider is not engaging with Ofcom. Furthermore, Ofcom should clarify that, in the event it requests further information to enable it to estimate QWR, it will allow service providers sufficient time to collect or generate that information. This is critical given the importance of providing accurate and fulsome information. We anticipate that gathering the requested information will require providers to obtain information from multiple different teams, spanning various geographies and business functions, and the potential need to apportion the revenue based on service and/or country-base. **Confidentiality** As set out in Google's response to Ofcom's first consultation on the fees and penalties regime, we would like to reiterate that responses to Ofcom's information requests regarding fees and penalties should be kept confidential. We are supportive of Ofcom's recognition at paragraph 9.15-17 of the Fees Statement that Ofcom does not expect to publish commercially sensitive information, and that various exemptions under the Freedom of Information Act 2000 may apply in the event that a request is made under that Act. Where Ofcom is required to publish information under s.393 Communications Act 2003 (for example, because it considers it necessary to enable Ofcom to carry out its regulatory functions), we recommend that Ofcom should commit to, where possible, aggregate or summarise information so as to publish the information in an anonymised form. This is a proportionate commitment for Ofcom to make in circumstances where the relevant information is likely to be sensitive financial information, and where it is unlikely that publication of such information would facilitate Ofcom's functions