

Your response

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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.	The proposed guiding principles are, on the whole, reasonable, appropriate and sufficient. It is welcome that there is no prescribed hierarchy or prioritisation in terms of the principles, and that services are expected to resolve any tensions between them based on their own circumstances and in a reasonable manner (paragraph 70). This is the right approach, given the diversity of services and business models in scope and the range of operational and financial data available to services. We note, however, that the guidance also makes clear that ‘transparency’ is a baseline consideration for all QWR calculations, and that the ‘completeness’ and ‘accuracy’ principles are specifically enshrined in Ofcom’s requirements (paragraph 72). Services will be required to submit a declaration alongside their fee-paying notification to attest that the evidence provided is complete and accurate. These statements appear to contradict paragraph 70. Given that a senior manager will have to affirm that evidence is complete and accurate, it is likely that services will prioritise these principles when calculating QWR. The guidance could therefore provide greater clarity on Ofcom’s approach to assessing services’ compliance with the principles, and whether services should in fact give greater consideration to completeness and accuracy. We note paragraph 71, which states that consideration of different elements of QWR calculation should be proportionate to the materiality of those elements to overall QWR. This is welcome, since apportioning small amounts of revenue could be difficult and there may be limited data available. An illustrative example here might help firms, however, better understand Ofcom’s views on when providers may be able to dedicate less work and consideration to certain elements of their QWR calculation. Beyond these specific points, we would note that the calculation of QWR, and the process of notifying Ofcom,

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	will require a significant amount of work for many services. Many businesses do not currently account for revenue based on where it is generated on their website (“relevant” parts of their service). Therefore, ensuring that all relevant revenue is considered, calculated without material errors (including in any underlying operational or financial data), and with assumptions and methodologies sufficiently evidenced, will require services to set up new workstreams that did not exist previously and require significant input from a wide array of business stakeholders. Services will face a choice about whether to invest the substantial resource required into ensuring that a QWR calculation complies with all of these principles, including any apportioned revenue, or simply attribute all of their revenue to QWR and pay more than they need to. The requirement to divert teams to creating a system for calculating QWR will take those staff members away from more productive and innovative activities, at a time when complying with the Online Safety Act has already imposed significant compliance obligations on low-risk firms (and thus opportunity costs). This is a disproportionate approach for firms that will require minimal regulatory oversight from Ofcom. We believe that this underlines yet again that Ofcom’s decision to abandon the “polluter-pays” principle for the fees regime and to base fee-eligibility solely on revenue is the wrong approach. We continue to believe that Ofcom should consider risk (or a proxy for risk) as a factor in the calculation of QWR. For a regime that is focussed on regulating the riskiest online services in terms of illegal online content, this would be the most proportionate and justifiable approach to levying fees. We disagree with Ofcom’s argument that designing such a regime would be too difficult. Ofcom has carried out extensive research into the types of services and functionalities that increase the risk of users encountering illegal content online. It is well-established that certain types of service pose a greater risk from illegal content and/or content that is harmful to children.

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	However, even without considering risk, there are many ways that Ofcom could have designed a fairer fees regime that would more accurately reflect the level of regulatory oversight required by a service. Indeed, the EU's Digital Services Act (DSA) provides a template. Under the DSA, fees are: only levied on Very Large Online Platforms or Very Large Online Search Engines; are applied to worldwide profit rather than revenue; are varied in relation to user numbers; and are capped at a maximum of 0.05% of worldwide profit for an individual service. This approach means that only the biggest firms are liable for fees which, while not perfect, does better reflect which services will likely require more of Ofcom's attention. It also means that services with more users will pay more and, by applying fees to profit rather than revenue, it does not disproportionately impact services that operate in lower-margin sectors. Finally, the annual cap on an individual service's fees affords much greater certainty to services and helps them to better plan financially. Ofcom has rejected all of these options and has thus designed a fees regime that means the UK tech sector is less internationally competitive. Firms will be liable to pay fees simply for being globally successful, while smaller but riskier firms face no such financial burden. Ofcom has prioritised a fees regime that is easy for it to implement but not for the services in scope. We believe this is the wrong approach and ask Ofcom to re-evaluate its approach.

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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.	As we have noted in response to question 1, any apportionment method is likely to require substantial upfront investment of time and resource by services to ensure that it complies with the principles set out in the guidance. Nevertheless, we welcome the recognition that there are a number of apportionment methods that may be suitable when apportionment is required (paragraph 80). Ofcom prescribing a particular approach, or methodology, would be unsuitable given the variety of services and business models that may be in scope for paying fees. However, this flexibility offered to services appears to be undermined subsequently, with the guidance stating that “if suitable data is available, an apportionment based on usage would likely be preferable to one based on costs” (paragraph 85). The same paragraph offers no explanation for why Ofcom believes this will often be the case, and it is not clear to us either. It adds an element of ambiguity into guidance that is supposed to clarify, and we would recommend that Ofcom amend this paragraph so that services’ flexibility to choose the most suitable method is made clearer. With regards to particular apportionment methods, we would note that: • Usage-based metrics are not always a reliable reflection of revenue, with many users often generating little or no revenue, and so usage-based approaches could inflate a service’s QWR. • Many services will not recognise costs based on which parts of a service they are incurred on. Costs for many businesses will often be split across multiple parts of a service’s website, and devising a way to attribute specific costs to certain parts would take time and require engineering support. Overcoming these obstacles and ensuring that QWR meets the principles outlined above as well as the requirements of the Act will impose a considerable additional compliance burden on services.

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Please tell us how you came across about this consultation.

- ☐ Email from Ofcom
- ☐ Saw it on social media
- ☐ Found it on Ofcom's website
- ☐ Found it on another website
- ☐ Heard about it on TV or radio
- ☐ Read about it in a newspaper or magazine
- ☐ Heard about it at an event
- ☐ Somebody told me or shared it with me
- ☐ Other (please specify)

Please complete this form in full and return to osfeesregime@ofcom.org.uk.