

**Content warning:** This report contains sexual references, including descriptions of pornography, bodily functions, and sexual acts which may not be suitable for all readers. This report contains reference to and descriptions of drug use.

# Investigation into MintStars Ltd compliance with rules to protect children from restricted material

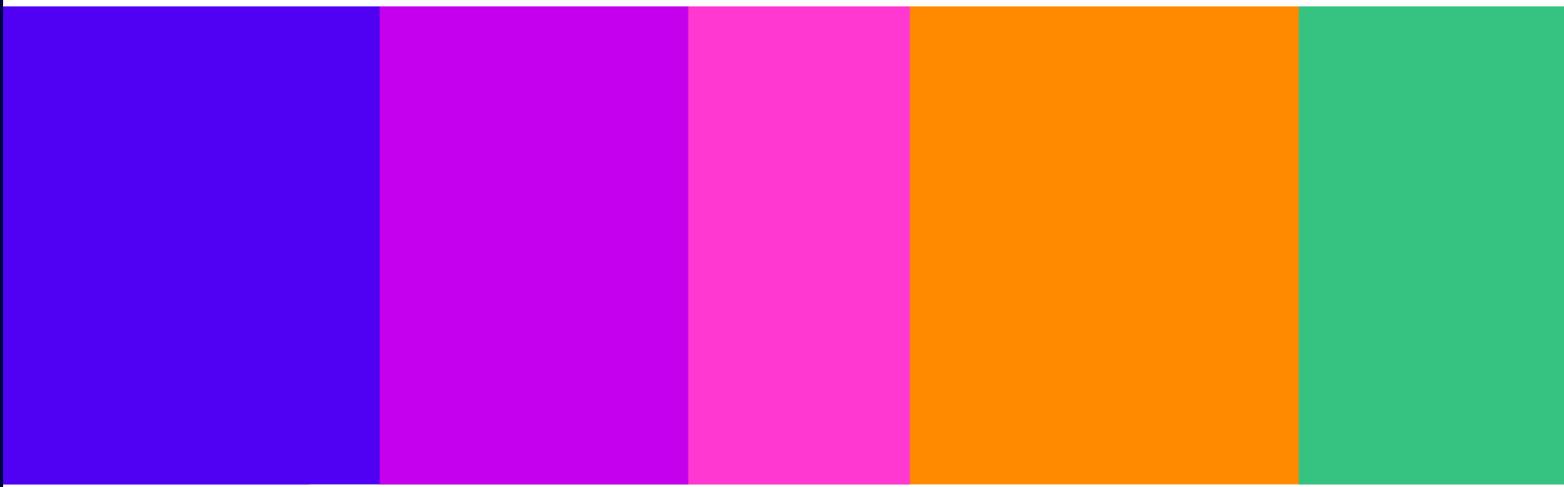
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Final Decision

**Non-confidential version – Redactions marked with [X]**

Case reference: CW/01281/02/24

Issue date: 23 January 2025



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# 1. Overview

- 1.1 This is a Final Decision setting out the Office of Communications' ('Ofcom's) decision on a breach and penalty under Part 4B of the Communications Act 2003 (the Act) in respect of MintStars Ltd (MSL), whose registered company number is 13834414 and registered office is 3 Medina Square, Epsom, England, KT19 7NS.
- 1.2 MSL is the provider of a Video Sharing Platform ('VSP') service notified to Ofcom under Part 4B of the Act.
- 1.3 This Final Decision sets out our findings in this investigation as we outline below. This Final Decision provides a formal notification of our decision on contravention and penalty issued under section 368Z3. It sets out why we consider MSL to have contravened its duties under Part 4B of the Act, our decision to impose a penalty on MSL and our reasons for the level of penalty.

## Ofcom's Decision – in brief

Ofcom's investigation has concluded that MSL has contravened its duties under the following sections of the Act:

- a) section 368Z1(1)(a): duty to take such of the measures as set out in Schedule 15A of the Act as are appropriate for the purposes of protecting persons under the age of 18 from videos containing restricted material, and/or
- b) section 368Z1(2): duty to implement the measure taken in such a way as to carry out the purpose or purposes mentioned in section 368Z1(1) for which the measure is appropriate.

**Ofcom has found MintStars' non-compliance with the relevant duties to be a serious breach of its duty to protect under-18s from restricted material. Our Final Decision imposes a financial penalty of £7,000 on MintStars.**

Our view is that this penalty is appropriate and proportionate to the contravention. In setting this penalty, we have had regard to all the evidence referred to in this document, together with the factors set out in our published Penalty Guidelines, including:

- the size, resources and financial position of the Company;
- the duration of MintStars contravention;
- the degree of actual and potential harm caused by MintStars' contravention;
- the extent to which MintStars acted deliberately, recklessly or for financial gain; and
- MintStars' co-operation throughout the investigation and implementation of age assurance technology on the platform

The level of the penalty includes a 30% discount which reflects resource savings achieved by Ofcom as a result of MintStars Ltd admitting liability and entering into a settlement with Ofcom.

**This overview is a simplified high-level summary only. Our findings and our reasoning are set out in the full document.**

## 2. Regulatory Framework

- 2.1 This section sets out the parts of the statutory framework that are relevant to Ofcom's investigation under Part 4B of the Act.<sup>1</sup>
- 2.2 Providers of VSPs that meet the scope and jurisdiction criteria under section 368S of the Act are required to notify their service to Ofcom and must comply with the framework set out in Part 4B. MSL meets the scope and jurisdiction criteria under the Act and submitted a notification in respect of its provision of the VSP platform [www.MintStars.com](http://www.MintStars.com) (MintStars) to Ofcom in December 2022.

### Duties relating to protecting children from restricted material.

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- 2.3 Section 368Z1(1)(a) of the Act requires VSP providers to take such of the measures set out in Schedule 15A of the Act as are appropriate for the purposes of protecting children from videos<sup>2</sup> containing restricted material. Under section 368Z1(2) of the Act, VSP providers are required to implement any Schedule 15A measure that they take in such a way as to carry out the purpose for which the measure was taken.
- 2.4 The Schedule 15A measures relevant for the purpose of protecting children from videos containing restricted material include establishing and operating systems for obtaining assurance as to the age of potential users and providing for parental control systems in relation to restricted material.
- 2.5 'Restricted material' is defined in section 368Z1(8)<sup>3</sup> of the Act to include: (i) "prohibited material" within the meaning of section 368E(3)(a)<sup>4</sup> or (b); and (ii) "specially restricted material" within the meaning of section 368E(5).
- 2.6 Section 368E(5) sets out that "specially restricted material" means: "*(a) a video work in respect of which the [BBFC] has issued a R18 classification certificate;*<sup>5</sup> *(b) material whose nature is such that it is reasonable to expect that, if the material were contained in a video work submitted to the [BBFC] for a classification certificate, the [BBFC] would issue a R18 classification certificate; or (c) other material that might impair the physical, mental or moral development of persons under the age of 18.*"
- 2.7 The R18 category is a special and legally restricted classification, primarily for explicit videos of consenting sex or strong fetish material involving adults, and where the primary purpose of the material is sexual arousal or stimulation.

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<sup>1</sup> [Part 4B of the Act](#)

<sup>2</sup> A 'video' in this context means "*a set of moving or still images, or of legible text, or of a combination of those things (with or without sounds), which constitutes an individual item irrespective of its length (and which is not an audiovisual commercial communication)*". [Section 368Z13](#) of the Act.

<sup>3</sup> [Section 368Z1 of the Act.](#)

<sup>4</sup> [Section 368ZE of the Act.](#)

<sup>5</sup> The BBFC states R18 certification is "*primarily for explicit works of consenting sex or strong fetish material involving adults*".

- 2.8 VSP providers are required to determine whether a Schedule 15A measure is appropriate to take in relation to their platform, according to whether it is practicable and proportionate, taking into account certain factors including, but not limited to, the size and nature of the platform, the type of material on the platform, the harm it may cause and the characteristics of users to be protected.<sup>6</sup>
- 2.9 Additionally, section 368Z1(5) states *“When determining whether a measure is appropriate for the purpose mentioned in section 368Z1(1)(a), the principle that restricted material that has the most potential to harm the physical, mental or moral development of persons under the age of 18 must be subject to the strictest access control measures must be applied.”*
- 2.10 Ofcom has published ‘Guidance for video-sharing platform providers on measures to protect users from harmful material’ (the VSP Harms Guidance)<sup>7</sup>, to support UK-established VSP providers in understanding their regulatory obligations under section 368Z1 of the Act.
- 2.11 As stated in the VSP Harms Guidance, *“Ofcom interprets the [access control] principle ... to mean that if a VSP has restricted material on its service that is of a pornographic nature,<sup>8</sup> providers should have a robust access control system that...prevents under-18s from accessing such material.”<sup>9</sup>*
- 2.12 The VSP Harms Guidance also states that should Ofcom be required to make an assessment about whether a platform requires such measures, some of the indicators that we might consider in making this assessment include:<sup>10</sup>
- a) How much pornography is on the platform.
  - b) The significance of pornography to the service.
  - c) The way in which the service is positioned in the market.
  - d) Third party insights which indicate the service specialises in pornography or that there is a high risk of under-18s being able to access pornographic material on the platform.

## Ofcom’s investigatory and enforcement powers

- 2.13 Under section 368Z3(1) of the Act Ofcom has the power to take enforcement action against a VSP provider where it determines that a provider has failed to:
- a) take a measure set out in Schedule 15A which Ofcom considers to be appropriate in relation to that VSP for protecting persons under the age of 18 from videos containing restricted material, such as pornographic material; and/or

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<sup>6</sup> See section 368Z1(4) of the Act.

<sup>7</sup> [Video Sharing Platform Guidance for Providers on measures to protect users from harmful material.](#)

<sup>8</sup> Paragraph 4.113 of the VSP Harms Guidance states that it *“regards restricted material of a pornographic nature to mean material that has either been issued an R18 classification certificate from the BBFC or material whose nature is such that it is reasonable to expect that, if it was submitted to the BBFC for a classification certificate, it would be issued an R18 classification certificate.”* Paragraph 4.114 adds that other material *“that has either been issued, or would be likely to be issued, an 18 classification certificate as a “sex work” by the BBFC will also be regarded by Ofcom as restricted material of a pornographic nature, similar to the approach to R18 or R18-like material.”*

<sup>9</sup> Paragraph 4.111 notes: *“This is a priority for VSP providers specialising in pornographic material, VSP providers with services on which there is a significant risk of under-18s encountering pornographic material, and/or VSP providers that allow pornographic material in their terms of service. It is for VSP providers to consider these factors and decide whether robust access controls need to be applied either to the whole platform or a part of it.”*

<sup>10</sup> Paragraph 4.112 of the [VSP Harms Guidance.](#)

- b) implement a schedule 15A measure taken in such a way as to protect persons under the age of 18 from videos containing such material.
- 2.14 This enforcement action may involve issuing an Enforcement Notification (in accordance with section 368Z3(4)) and/or issuing a penalty (in accordance with section 368Z4).
- 2.15 Ofcom must not make a determination unless there are reasonable grounds for believing that the provider has failed in accordance with a) or b) to take a measure and/or to implement that measure and we have allowed the provider an opportunity to make representations about that apparent failure. Accordingly, Ofcom's practice is to issue a provisional decision that sets out:
  - a) the determination we are minded to make;
  - b) the steps we are minded to require the provider to take to comply with section 368Z1(1) and/or (2) and/or remedy the failure; and
  - c) any penalty which we are minded to impose; and

gives the provider an opportunity to make representations about the alleged failure and the requirements we are minded to impose, including the level of the proposed penalty.

# 3. Our investigation and findings

**Content warning: This section contains sexual references, including descriptions of pornography, bodily functions, and sexual acts which may not be suitable for all readers. This section contains references to and descriptions of drug use.**

- 3.1 Our decision is that we have reasonable grounds for believing that MSL contravened section 368Z1(1)(a) and/or (2) of the Act.
- 3.2 In this section we set out the evidence and reasoning that underpins our findings.

## Our investigation

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- 3.3 In January 2023 Ofcom announced it was opening an enforcement programme to look at whether UK-established video-sharing platforms (VSPs) that specialise in adult content have appropriate age assurance measures in place, as required under the VSP regime.<sup>11</sup> In this context, Ofcom made the following observations when it reviewed the Mintstars platform in September 2023:
  - a) Users were required to log in or create an account to view the ‘Explore Page’ which catalogued and displayed creator content.
  - b) Part of this process required users to self-declare they were over the age of 18 and asked if they wished to view sexually explicit material. This attestation was mandatory.
  - c) No videos were available or visible without subscribing to a creator’s content.
  - d) Blurred but semi-clear thumbnails images of pornographic nudity were displayed.
  - e) Cryptocurrency was the only option for payment on the service with GateFi being the default provider; however, Ramp Network and Moonpay services were also available to convert fiat (regular currency such as British Pound or US Dollar) into cryptocurrency.
- 3.4 In order to test the paywall payment processes which allowed access to adult content (to determine whether they represented an effective block on under-18s accessing pornographic and other adult content), Ofcom attempted to contact MSL to understand the practices in place by the payment processors. However, despite multiple attempts MSL declined our attempts to set up meetings and, in some cases, did not respond.
- 3.5 In February 2024, Ofcom conducted a further review of the MintStars platform and observed that alterations had been made to the functionality of the platform which potentially increased the risk of users under-18s accessing restricted material.
- 3.6 In particular, we noted that there was no longer a requirement to create an account prior to viewing the ‘Explore Page’ and that not all video content was obfuscated prior to payment, with material numbers of ‘previews’ of content available, consisting of short videos played automatically when the user hovered over the video. We noted that many preview videos contained pornographic material.

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<sup>11</sup> [Enforcement programme into age assurance measures on UK-established, adult video-sharing platforms - Ofcom](#)

- 3.7 In light of these observations, Ofcom opened an investigation on 27 February 2024<sup>12</sup> into MSL’s compliance with section 368Z1(1) and (2) of the Act.
- 3.8 On 30 April 2024, Ofcom issued a formal Information Request under section 368Z10 of the Act requiring MSL to provide information to assist with our investigation (the Information Request). The Information Request was primarily made to ascertain the nature of the platform, any access control measures in place and any alterations that had been made to the platform between 1 September 2023 and 27 February 2024. MSL responded in full on 3 June 2024.
- 3.9 On 27 August 2024, MSL implemented [X] age estimation software. Following the implementation of the software, Ofcom observed that there did not appear to be any explicit videos viewable before the age assurance process.

## Relevant facts and assessment of information gathered during the investigation

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### Restricted material

- 3.10 As explained in section 2, the VSP framework sets an expectation that videos containing restricted material that has the most potential to harm the physical, mental, or moral development of persons under the age of 18 should be subject to the strictest access control measures.
- 3.11 MintStars.com is a platform which allows content to be posted by content creators who can choose what type of content they post, within the guidelines and terms of service of the platform. In response to Ofcom’s information request, MSL stated that “26.7% of the platform is videos”. It also explained “The platform contains some pornographic material, although the majority of the content on the site is not pornographic. Some content on the platform contains nudity. The vast majority of adult content on the site is solo content (containing only one person). A small fraction of content on the platform (<5%) contains sexual acts between two people. Aside from pornographic material, we do not allow any other restricted material on the platform”.
- 3.12 Throughout the investigation, we conducted multiple reviews of the platform. On each occasion, Ofcom observed content of a pornographic<sup>13</sup> nature on the platform on the ‘Explore Page’ and individual creator pages, which falls within the definition of restricted material as set out in the Act.<sup>14</sup>
- 3.13 Despite MSL’s assertion that Mintstars.com did not contain restricted material beyond pornographic content, while conducting the reviews, we observed that there was also video content available for preview which contained drug use (or at least the perceived use of drugs) and drug paraphernalia. We noted that some of the content viewed had been

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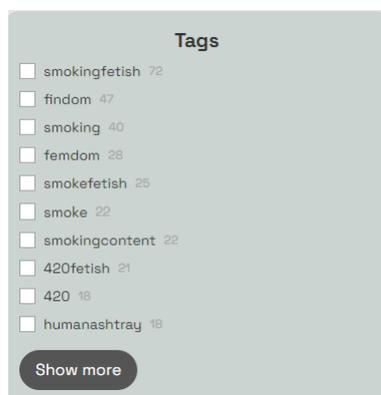
<sup>12</sup> [Investigation into MintStars Ltd compliance with rules to protect children from restricted material - Ofcom](#)

<sup>13</sup> Pornography is defined as videos whose primary purpose is sexual arousal or stimulation and should be considered as only suitable for adults, in line with [BBFC Classification Guidelines on Sex works at 18](#).

<sup>14</sup> As set out in section 368Z1(8) of the Act.

available for in excess of three months and '420'<sup>15</sup> and other drug-related themes were a searchable tag<sup>16</sup> on the platform returning results related to drug use.

Image 1, an observed list of suggested searchable tags and returnable content on the platform<sup>17</sup>



- 3.14 The titles and descriptions used to accompany the content and the associated tags also pointed to the nature of the content, indicating that it contained actual use of illegal drugs.
- 3.15 Content containing illegal drug use is classified as restricted material by virtue of being content unsuitable for classification, and as such will constitute restricted material within the meaning of the Act.<sup>18</sup> Additionally, the British Board of Film Classification (BBFC) consider drug and substance misuse content that is instructional or glamourised (for example, by associating drugs with success or sex) without a clearly aversive counterbalance, is likely to require an 18 classification.<sup>19</sup>
- 3.16 For all of the reasons set out above, Ofcom was satisfied that the platform included videos containing restricted material in the form of content of a pornographic nature and material showing drug use or perceived drug use.

## Access control measures

- 3.17 Under section 368Z1(1) of the Act, providers of VSPs must take such of the measures set in Schedule 15A as are appropriate for the purposes of protecting persons under the age of 18 from videos and audiovisual commercial communications containing restricted material.
- 3.18 Our VSP Harms Guidance references measures listed in the VSP Framework which we suggest may be appropriate for platform providers to take to protect users.<sup>20</sup> It gives additional guidance on what platforms may consider when implementing these.<sup>21</sup>
- 3.19 It also references some of the indicators Ofcom may consider when making an assessment about whether a platform requires such measures as set out in paragraph 2.12.<sup>22</sup>

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<sup>15</sup> The term '420' or '4/20' refers to 4:20pm or April 20<sup>th</sup> which is a date and time synonymous with cannabis use and culture. The number 420 itself has also come to be associated with marijuana and smoking and is often used as a colloquial term for the flower and the act of consuming it.

<sup>16</sup> Tags are words which categorise the content of videos and pictures on the platform making related or themed content searchable.

<sup>17</sup> Tags and returnable videos on 12 August 2024.

<sup>18</sup> See section 368E(3)(b) of the Act and paragraphs 3.9 and 3.10 of the [VSP Harms Guidance](#)

<sup>19</sup> [BBFC guide to drugs](#).

<sup>20</sup> Paragraph 2.33 of the [VSP Harms Guidance](#).

<sup>21</sup> Section 4 of the [VSP Harms Guidance](#).

<sup>22</sup> Paragraph 4.112 of the [VSP Harms Guidance](#).

## Access control measures in place before November 2023 and alterations to the platform

- 3.20 As noted at paragraph 3.3 above, when Ofcom first reviewed the platform in September 2023 we observed that access to pornographic content (or other restricted material) was restricted on Mintstars.com.
- 3.21 However, when we subsequently accessed the platform in February 2024 it became apparent that alterations had been made to the functionality of the platform which in our view materially increased the risk of under-18 users accessing restricted material, particularly as we observed this time that such material was available to preview on the Explore Page.
- 3.22 In response to Ofcom’s information request, MSL stated the first change (made on 5 September 2023) involved removing the requirement for users to create an account before viewing the Explore Page. Prior to this change a user would have to create an account by inputting their email address and confirming the account via a link sent to their email address. MSL stated it saw an improvement in account creation following this alteration.
- 3.23 MSL also explained that the second change to the platform was made in November 2023. We understand that this alteration enabled creators to post free content on their pages. MSL stated *‘2.4% of posts on the platform are videos which are viewable for free.’* We note that any free content posted was also accessible directly from the Explore Page.
- 3.24 MSL further explained that the platform’s Content Guidelines were also updated on 16 November 2023 to clarify that “certain types of sexual content” which could be upsetting or shocking to users who have not explicitly consented to seeing it may not be posted as free content. MSL stated that the Content Guidelines were updated to maintain standards of consent on the platform and ensure users can choose whether they wish to see this type of content.
- 3.25 The amended Content Guidance defines “certain types of sexual content” which we have referenced below.
- a) Consensual Non-Consensual (CNC) so long as it is not likely to appear to the viewer to be genuinely non-consensual. Inclusive of Hypnosis content and, where there is Bondage, it must demonstrate that the person in bondage is capable of indicating at any time if they wish to stop.
  - b) Content involving bodily fluids such as non-menstrual blood, urine or vomit. This does not include ejaculate, menstruation, saliva or lactation.
  - c) Content involving breaking of the skin barrier, such as needle insertion or cutting.
  - d) Whipping, caning or other impact play that leaves bruising or marks.
  - e) Any content including behaviour that might be dangerous if a person without proper training attempted it.
- 3.26 Ofcom noted there was no general prohibition on sexual content when free content is posted, meaning free content posted by creators could contain sexually explicit material and would be accessible to any person who accessed the site. Ofcom also observed content which was in breach of the amended Content Guidance in the form of a preview of a video which contained urination.

- 3.27 In response to our information request MSL stated, they enabled videos posted by creators to be previewed in December 2023. The previews were accessible by a user by hovering the mouse over a video on a web browser or clicking the video on a mobile. Ofcom observed that any person could click the video on their web browser, and it would present a larger version of the preview enabled content. MSL's response stated that changes in relation to free content and previews had resulted in improved paid user conversion.
- 3.28 In addition, MSL's response explained that on 24 February 2024, it removed the requirement for users to indicate whether they wished to view content posted by adult content creators or not during user signup process. MSL's response explained that users were mistakenly choosing the wrong option which caused confusion.
- 3.29 Finally, in February 2024, MSL changed its payment processor and implemented [redacted]. They specifically removed the ability to pay directly with cryptocurrency on the platform on 24 February 2024. This is assessed in paragraphs 3.32 – 3.36.

### What measures did MSL take to protect under-18s from Restricted Material?

- 3.30 Following the changes made between November 2023 and February 2024, and prior to the implementation of age verification measures on 27 August 2024 (the Relevant Period), in order to access the MintStars.com platform, users were required to self-declare that they were over 18 before they could view any content on the site, by clicking a button on a pop-up which read, "I confirm I am over 18 years old." In addition, the Platform Acceptable Use Policy stated that users must be over 18 years old to use the platform.<sup>23</sup>
- 3.31 In their response to our information request MintStars stated "*the majority of content on the site is behind a paywall; only 2.4% of posts on the site are videos viewable for free*". However, during our review of the platform Ofcom noted that a significant amount of paid content contained previews, which was made available as a function separately to creators posting free content.
- 3.32 MSL's response also stated it had changed its payment processor to [redacted] on 24 February 2024 and the payment methods accepted are debit and credit card. MSL explained it additionally removed the ability to pay directly with cryptocurrency, stating the reason for the change as providing a higher acceptance rate for card payments.
- 3.33 Following these changes, to view paywalled content, MSL submitted that users were required to "*use a credit or debit card and pass the payment provider's KYC [Know Your Customer] requirements, which provides an additional layer of restricted access to make it difficult for users under 18 to access the material.*"
- 3.34 During our investigation, MSL provided us with information<sup>24</sup> which explained the payment processor's KYC<sup>25</sup> process. It stated "*Currently when a purchase is made on MintStars, our payment processor [redacted] runs the purchase through their antifraud detection system, and also requires 3DS authentication with the bank to ensure the user is the legitimate owner of the card. If a payment is flagged as suspicious, or if they attempt to make a purchase over a set monetary threshold, then this will trigger KYC with [redacted] which requires them to upload ID and pass a face scan.*"

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<sup>23</sup> 1.4 Platform Acceptable Use Policy.

<sup>24</sup> Email to Ofcom from MSL dated 2 August 2024.

<sup>25</sup> KYC or Know Your Customer is the process that financial institutions and other businesses use to ascertain the true identity of their customers, ensuring they are who they claim to be.

- 3.35 The payment processor’s website explains 3DS (3D secure) as a security protocol which prevents fraud and confirms that the person who is attempting to complete the transaction is the owner of the card by various methods such as One Time Passwords (OTP), Biometric Identification or security questions. It does not appear to confirm the age of the payer, only match the identity to the card being used. An example of the payment with 3DS on the payment processor’s website shows an OTP process where a passcode has been sent to the user’s device to be entered as confirmation of identity.
- 3.36 In a demonstration of the payment processor’s advanced verification with purchase limits (KYC process) the video demo shows that when a purchase limit is put in place a process is triggered which requires the user to upload physical ID and provide a live facial scan to confirm the ID belongs to the user. Although this could potentially be used as a method of age verification, as stated by MSL, we have no evidence to demonstrate that this process was used to verify a user’s age before allowing access to restricted material. In addition, we note this process was only triggered by payments over a set threshold, whereas significant amounts of material were available to purchase for far lower amounts.
- 3.37 In the Information Request, we asked MSL if it had any future plans to implement access control measures on the platform. They responded stating they were in the process of implementing measures via age assurance technology as a response to our investigation.
- 3.38 In an email to Ofcom dated 26 August 2024, MSL confirmed that they had implemented [X], an age estimation tool, on the platform. On 27 August 2024, Ofcom observed there was still restricted material accessible via video previews prior to any age assurance process taking place and raised this with MintStars.<sup>26</sup> On the same day, MintStars responded<sup>27</sup> explaining that there were some issues occurring on the technology provider’s side, not within the control of MSL and were now resolved. They advised “*We’ve implemented age verification immediately and for any webpage which has any content on it.*” indicating a further update had been made to the platform.

### MSL’s access control measures (at least pre-August 2024) were not appropriate to protect under-18s from restricted material on the Mintstars platform

- 3.39 Paragraph 4.119 of the VSP Harms Guidance notes that Ofcom would not consider the following to be appropriate forms of age verification for material of a pornographic nature:
- a) Self-declaration of date of birth or a ‘tick box’ system to confirm that the user is over the age of 18;
  - b) General disclaimers asserting that all users should be deemed to be over the age of 18;
  - c) Relying on age verification through online payment methods which may not require a person to be over-18, e.g. Debit cards or any other card where the card holder is not required to be over 18;
  - d) Relying on publicly available or otherwise easily known information such as name, address, and date of birth to verify the age of a user.
- 3.40 As such, it is our decision that the access measures in place on the Mintstars platform (self-declaration that the user was over 18 via a ‘tick-box’ upon entry to the site; specification in

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<sup>26</sup> Email from Ofcom to MSL dated 27 August 2024.

<sup>27</sup> Email to Ofcom from MSL dated 27 August 2024.

the terms and conditions of use that users were to be over-18) were not appropriate forms of age verification for material of a pornographic nature.

3.41 We further find that the KYC process apparently in place through the payment processor was inadequate to prevent under-18 users from accessing restricted material for the following reasons:

- a) Given that pornographic content was available on the platform through either free content on a creator's page, and through short previews available from the 'Explore Page', any KYC processes in place through the payment processor would not have been engaged;
- b) There is no evidence that the KYC process focused on verification of a user's age, or passed that information to Mintstars in a way that would have acted as an effective access control for users attempting to access pornographic content; and
- c) The KYC process was triggered by a set monetary threshold. Ofcom has observed that subscriptions to content and payment for individual content has a significant range of prices below this trigger. This means that many of the subscriptions and individual content could be purchased without the KYC process being carried out.

3.42 On the basis of the above, we find that MSL:

- a) Failed to take appropriate measures to protect under-18s from restricted material as required under section 368Z1(1)(a) of the Act; and/or
- b) Failed to implement age assurance measures in such a way as to carry out the purpose of protecting persons under the age of 18 from restricted material, as required under section 368Z2 of the Act,

at least for the period between November 2023 and 27 August 2024.

### **It was appropriate for MSL to establish and operate systems for obtaining assurance as to the age of potential viewers**

3.43 A fundamental objective of the VSP Framework is to protect under-18s from videos containing restricted material. The Act requires VSP providers to take such of the measures listed in the Act as are appropriate for this purpose. Those measures include, specifically, measures to establish and operate systems for obtaining assurance as to the age of potential viewers.

3.44 Whether a measure is an appropriate measure for a platform should be determined by whether it is 'practicable and proportionate' for the measure to be taken, considering a range of factors which include the size and nature of the VSP, the nature of the material in question, and the harm the material in question may cause.<sup>28</sup>

3.45 When determining whether a measure is appropriate for the purpose of protecting under-18s from videos containing restricted material, VSP providers are also required under section 368Z1(5) of the Act to apply the principle that restricted material that has the most potential to harm the physical, mental or moral development of under-18s must be subject to the strictest access control measures. As noted at paragraph 4.110 of the VSP Harms Guidance, Ofcom interprets this to mean that if a VSP has restricted material on its service that is of a

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<sup>28</sup> Section 368Z1(4) of the Act.

pornographic nature, providers should have a robust access control system that verifies age and prevents under-18s from accessing such material.

- 3.46 As established in paragraphs 3.10 to 3.16, the MintStars.com platform hosted content of a pornographic nature, as well as other content likely to fall within the definition of restricted material, such as actual or perceived drug use. We therefore consider that it was appropriate for MSL to implement robust access control measures which would effectively prevent under-18s from accessing the platform.
- 3.47 For the avoidance of doubt, we consider that it was both practicable and proportionate for MSL to have put in place age assurance measures to protect under-18s from restricted material.
- 3.48 MSL submitted that, during the period the platform alterations were made, MSL believed [redacted]. MSL's submission also highlighted the costs of implementing the technology<sup>29</sup> and stated it would be prohibitive to its operations [redacted].
- 3.49 While we have carefully considered the interests and financial position of the service provider, MSL, we do not consider that a lack of resources was a reasonable justification for failing to invest in appropriate measures to protect children from restricted material when balanced against the pornographic content on the platform and the need to protect children from harm. As stated in the VSP Harms Guidance, a lack of resources or an unwillingness to invest in new measures are not a sufficient justification for not taking a particular measure.<sup>30</sup>
- 3.50 We further note that, prior to the changes made to the platform in November 2023, MSL operated a platform where all content was obfuscated, and access was controlled by a paywall. The risk of under-18s accessing restricted content in this scenario was relatively low. We further note that, in response to our information request, MSL stated the intention of making changes to the platform was to improve 'paid user conversion': *"Prior to having previews and free content, almost no purchases were being made on the platform. After implementing these changes, we [MSL] saw an improvement in paid user conversion,"* meaning that such protections as were in place were effectively lowered to increase revenues. We have no evidence that MSL took steps to assess the risk the changes to the platform presented to under-18s, or considered whether further measures would be appropriate to protect children or comply with their statutory obligations. As such, it is our view that changes were made which increased the risk of under-18s accessing the platform without consideration of the risk such changes presented to under-18s and focused instead on opportunities to increase revenue from the platform.
- 3.51 In addition, it is our view that adjustments to the payment method and monetary triggers set for payment processors to conduct KYC could have been considered and restrictions on the accessibility of the content could have been maintained in order to ensure compliance with the obligations under section 368Z1 to prevent under-18s from accessing restricted material on the platform. It is not acceptable to contravene obligations under section 368Z1 (where applicable) to improve the appeal of a service to attract investors.

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<sup>29</sup> MintStars Ltd response to annex1, question 5, page 4.

<sup>30</sup> 6.33 and 6.34 of the [VSP Harms Guidance](#).

- 3.52 In response to our information request, MSL further explained<sup>31</sup> that they had not implemented additional age verification measures, such as "ID upload or a face scan" due to concerns for the privacy of its users, stating that it believes that most consumers consider these an invasion of their privacy: *"there are very few viable age verification software providers available on the market, and we have serious concerns that [the age estimation software] may not have sufficient security measures to protect our users' privacy. Nonetheless, they appear to be the best of the options currently available."*
- 3.53 In relation to MSL's submission as to the privacy of its users, as stated in the VSP Harms Guidance,<sup>32</sup> Ofcom is of the view that when considering the proportionality of taking and implementing any particular measure providers must take into account its potential impact on the rights and legitimate interests of users. Rights and legitimate interests of users may be covered by other regulatory regimes for example under data protection legislation including the Data Protection Act 2018 and the UK General Data Protection Regulation. Companies providing services which would involve processing personal data must comply with relevant data protection legislation. It is therefore the responsibility of MSL to ensure that the provider of any chosen technology solution can provide assurances that the tools or service they provide are compliant.

## Ofcom's decision on MintStars Ltd.'s contravention

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- 3.54 Based on the facts and reasoning outlined above, we have reasonable grounds for believing that MSL contravened section 368Z1(1)(a) and/or (2) of the Act, for at least the period between November 2023 when changes were made to the platform, and 27 August 2024 when MSL told us that [X] age estimation software had been implemented (the "Contravention Period"), by:
- failing to take such of the Schedule 15A measures as were appropriate for the purposes of protecting persons under the age of 18 from videos and audiovisual commercial communications containing restricted material; and/or
  - failing to implement any such of the measures taken in such a way as to carry out the purpose of protecting under-18s from such material.
- 3.55 We consider that MSL should have:
- a) reviewed the access control measures in place in line with the changing functionality and risk profile of the platform, and;
  - b) implemented robust age verification processes which mitigated the effects of the changes made to the platform and effectively prevented under-18s from being able to access restricted material on the platform.
- 3.56 Section 368Z3 of the Act gives Ofcom the powers to:
- a) issue MSL with an "enforcement notification", which specifies that Ofcom has determined that a VSP provider has failed to take appropriate measures (or to

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<sup>31</sup> We further note MSL's submission that a reason for not implementing age verification measures on the platform was out of concern of harm to their content creators and their ability to raise revenue from the platform. As we set out at paragraph 3.50, we do not consider that a desire to increase revenue, whether for the platform or its creators, is sufficient justification for not taking a particular measure that affects the safety of children.

<sup>32</sup> Paragraph 6.30 and 6.32 of the [VSP Harms Guidance](#).

implement them effectively) and imposes requirements on the provider to take steps for complying with section 368Z1(1) or (2); and/or,

- b) impose a financial penalty on the provider in accordance with section 368Z4 of the Act.
- 3.57 As explained in paragraph 3.38 above, MSL implemented [X], an age estimation tool on the platform on 27 August 2024. On this basis, we are not issuing an enforcement notification (in addition to this decision that MSL has contravened its duties under section 368Z1(1)(a) and (2)) requiring MSL to take steps to remedy the contravention by implementing robust age verification processes.
- 3.58 For the avoidance of doubt, our decision does not amount to an endorsement of the chosen age verification measure, nor have we assessed whether it will be sufficiently effective to ensure compliance with MSL's duties going forward. It remains incumbent on MSL to ensure that it implements this measure in such a way as to carry out the purpose of protecting under-18s from restricted material, as required by section 368Z1(2) of the Act.
- 3.59 However, for the reasons set out in Section 4, we consider it appropriate in this case to impose a financial penalty.

# 4. Ofcom’s consideration of financial penalty

Content warning: This section contains references to and descriptions of drug use.

## Summary

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- 4.1 Under section 368Z3 of the Act, Ofcom has the power to impose a financial penalty where it determines that a VSP provider has failed to comply with an enforceable duty in the Act. Section 368Z4 of the Act sets out that the maximum penalty that may be imposed on a provider of a video-sharing platform service under section 368Z3 must not exceed 5% of the provider’s applicable qualifying revenue or £250,000, whichever is the greater. Section 368Z4 also sets out that the penalty must be appropriate and proportionate to the contravention or failure in respect of which it is imposed. Ofcom is also required to have regard to its Penalty Guidelines published under section 392 of the Act.<sup>33</sup>
- 4.2 As set out in section 3 above, we have reasonable grounds to believe that MSL contravened the duties imposed under section 368Z1(1) and/or (2) of the Act for at least the period between November 2023 and 27 August 2024, which is the date when [X] age estimation technology was implemented on Mintstars (the “Contravention Period”). This constitutes a serious breach of its duties under the VSP regime, and, for the reasons explained below, Ofcom considers it appropriate and proportionate to impose a penalty of £10,000 for the failure during this period.
- 4.3 In reaching our view on the penalty, we have considered all the factors set out in Ofcom’s Penalty Guidelines, which we discuss in more detail below.

## Consideration of whether to impose a financial penalty and the appropriate amount

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### Deterrence

- 4.4 As set out in our Penalty Guidelines, the central objective of imposing a penalty is to effectively deter contraventions of regulatory requirements. Any penalty set should be sufficiently high to deter the business from contravening current and future regulatory requirements (specific deterrence), and additionally to deter wider industry from doing so (general deterrence).
- 4.5 We consider that imposing a financial penalty would incentivise MSL to ensure it takes appropriate steps to comply with its obligations under the VSP regime. It must therefore be sufficiently high to incentivise MSL at an organisational level to comply with current and future legal requirements. In particular, the level of the penalty should be high enough that the management recognises that it is not more profitable for a business to break the law and

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<sup>33</sup> Ofcom, [Penalty Guidelines](#), 14 September 2017.

pay the consequences than it is to comply with the law in the first instance. This should encourage good practice and a culture of compliance across the organisation.<sup>34</sup>

- 4.6 In addition, we consider imposing a financial penalty on MSL will send an important message to the wider industry and deter other providers from contravening their statutory obligations. VSP providers must take appropriate measures to protect under-18s from restricted material, including establishing and operating systems for obtaining assurance as to the age of potential viewers, applying the principle that restricted material that has the most potential to harm the physical, mental, or moral development of under-18s must be subject to the strictest access control measures. As set out in our VSP Harms Guidance, Ofcom interprets this statutory principle to mean that if a VSP has restricted material on its service that is of a pornographic nature, providers should have a robust access control system that verifies age and prevents under-18s from accessing such material. Imposing a financial penalty on MSL in this instance will ensure other VSP providers in the sector understand the importance of this.

## Seriousness and duration of the contravention

### Seriousness

- 4.7 Protecting under-18s from restricted material – including pornographic material – is a core aim and priority of the VSP regime.<sup>35</sup> As noted in our VSP Harms Guidance,<sup>36</sup> we consider that pornographic and other R18 material should be behind the strictest access controls. As such, we consider that a failure to implement effective access controls to protect under-18s from pornographic material is a serious contravention.
- 4.8 As explained in section 3, upon reviewing the platform Ofcom also observed creator content which depicted a perceived or actual use of drugs and drug paraphernalia. Content containing illegal drug use is classified as restricted material.<sup>37</sup> As well as contravening the platform’s own Acceptable Use Policy,<sup>38</sup> the presence of additional harmful content, together with a lack of adequate access controls compounds the risk of exposure to content which has the most potential to harm the physical, mental or moral development of persons under the age of 18.
- 4.9 It is also our view that a wider range of content, beyond free content and previews, was available to under-18 users as the KYC processes in place during the Contravention Period were not adequately positioned to prevent under-18s from purchasing material on the platform. The platform’s acceptable payment methods include debit card payments and any age verification that was in place was only triggered if the user transacted an amount over the monetary threshold, while content may cost substantially less.

### Duration

- 4.10 The Contravention Period lasted at least ten months: for the period between November 2023, when the functionality of the platform was changed to allow creators to post free content and any user could view restricted material on the Explore Page, and 27 August 2024 when [X] age estimation technology was implemented. Without adequate age

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<sup>34</sup> See paragraph 1.5 of [Penalty Guidelines](#)

<sup>35</sup> See [VSP Strategy Refresh Report \(ofcom.org.uk\)](#)

<sup>36</sup> See paragraph 4.123 of the [VSP Harms Guidance](#).

<sup>37</sup> Paragraph 3.9 and 3.10 of the [VSP Harms Guidance](#).

<sup>38</sup> Section 7.4(i) of MintStars Acceptable Use Policy.

verification processes in place during this period, there was serious risk of under-18s accessing restricted material on the platform.

## The degree of harm caused by the contravention

- 4.11 MSL submitted<sup>39</sup> during the investigation that during the period of 1 September 2023 to 27 February 2024, it only had 2,400 UK-based visitors to the Mintstars platform. They also stated that during this period the content on the platform was not discoverable by Google search as there were no search engine optimisation measures in place. They stated it would be extremely unlikely that a minor or adult could have stumbled across the platform by accident. MSL submitted that they “do not want minors to access their site and have no reason to believe any minors have accessed their site.”<sup>40</sup>
- 4.12 While we acknowledge that Mintstars is a small platform, with relatively low numbers of UK-based visitors, when considering the degree of harm caused by a contravention, Ofcom will not necessarily seek to quantify this precisely in all cases and will consider both actual and potential harm caused by a contravention.<sup>41</sup> Given the potentially harmful effects to a child’s mental, moral and physical development that may be caused by viewing pornographic material,<sup>42</sup> we consider that a failure to put in place appropriate measures to prevent under-18s from accessing pornographic material has the potential to cause material harm to under-18s.
- 4.13 We also note that information on [redacted]<sup>43</sup> confirms that the site is mainly accessed directly,<sup>44</sup> with 54.22% of overall traffic for June 2024 being direct access to the platform. Whilst, therefore, the platform is mainly accessed directly, information on [redacted] shows 26.32% of the traffic being directed via organic search<sup>45</sup>, as shown in image 2 below. This suggests that the platform is in fact discoverable through search engines, which increases the risk of under-18s finding and using the platform and being exposed to restricted material as a result. However, Ofcom acknowledges, through information provided by MintStars from [redacted],<sup>46</sup> that the majority of search queries which returned the platform MintStars and led to platform interaction were specific searches related to the platform<sup>47</sup> and not generic searches relating to pornography.<sup>48</sup>

Image 2, [redacted]

- 4.14 In relation to MSL’s submission<sup>49</sup> that they had no reason to believe minors had accessed the Mintstars platform, we note that MSL were unable to ascertain the age of persons that

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<sup>39</sup> Email from MSL to Ofcom on 16 July 2024.

<sup>40</sup> Email from MSL to Ofcom on 16 July 2024.

<sup>41</sup> See [Penalty Guidelines](#), paragraph 1.10

<sup>42</sup> See, for example, the [UEL Report](#) (a study commissioned by Ofcom into the risks and harms to children and young people being online, using social media and VSPs), section 2.4.6.

<sup>43</sup> [redacted]

<sup>44</sup> Direct access refers to accessing the platform by entering the URL ‘www.MintStars.com’ or ‘MintStars.com’ into the browser address bar.

<sup>45</sup> Organic search is a search query made via a search engine for the platform by name or themes related to the platform that may return it as a search result.

<sup>46</sup> Email from MSL to Ofcom on 23 October 2024.

<sup>47</sup> Search engine queries which may include platform specific terms such as ‘MintStars’ or naming a specific creator featured on the platform.

<sup>48</sup> Search engine queries which may include generic terms such as ‘porn’ used to search for platforms containing adult content.

<sup>49</sup> Email from MSL to Ofcom on 16 July 2024.

ended up accessing the site during the Contravention Period. While the user journey onto the platform did include a 'tick-box' attestation that the user was over-18, and the information in the terms and conditions confirmed the platform is aimed at over-18s, we consider that this would have been wholly ineffective to prevent under-18s from being able to access the restricted material on the platform during the Contravention Period. As such, while we are unable to quantify the actual harm posed by the accessible content on the platform, as noted at paragraph 4.12 above we consider the potential harm was sufficiently material to justify imposing a financial penalty for the alleged contravention in this case.

## The extent to which the contravention occurred deliberately and recklessly, or for financial gain

- 4.15 MSL notified Ofcom that Mintstars was a UK-established VSP and regulated under the VSP regime on 10 December 2022.
- 4.16 On 20 January 2023, Ofcom held an introductory meeting with representatives from MSL. At this meeting and a subsequent meeting on 21 April 2023, MSL explained the nature of their platform (including that it hosted pornographic services) and advised that the relevant payment processing companies provided a 'know your customer' (KYC) service via the platform to conduct identity/age verification of users.
- 4.17 At both meetings Ofcom explained the aims and purpose of the VSP regime, including its commitment to protecting under-18 users and the requirement for all VSPs to have adequate age assurance in place on their platforms to prevent under-18s from accessing restricted material.
- 4.18 At this stage all creator content was obfuscated until payments were made with a logged in account. The creation of an account did not require any age verification. However, MSL submitted that all content was behind a paywall which required payment or subscription. The effectiveness of the paywall as a verification tool was yet to be assessed.
- 4.19 Ofcom attempted to arrange a follow up meeting with MSL to assess the effectiveness of the verification processes operated by their chosen payment providers. On five occasions between October 2023 and February 2024,<sup>50</sup> Ofcom requested a meeting and each was declined or not responded to. An email from Ofcom dated 2 February 2024 advised MSL that if representatives were unable to commit to a meeting with Ofcom's Supervision Team, we would consider referring the matter to the Enforcement Team. No response was received from MSL. In February 2024, as part of a review of the platform, Ofcom noticed alterations had been made to the platform as set out at paragraphs 3.20-3.29 above.
- 4.20 Taking into consideration the fact that MSL had notified their service to Ofcom as a VSP and the subsequent discussions that had taken place, we consider that MSL were aware of their duties as a regulated VSP, including the duty to protect under-18s from restricted material. The evidence also suggests that the alterations made to the platform from November 2023, which increased the risk of under-18s accessing restricted material, were made deliberately to increase user engagement with the service and improve the 'paid user conversion', as stated by MSL in response to our information request. These changes included:
- a) Allowing creators to post free video content of a pornographic nature; and

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<sup>50</sup> Emails to MSL dated 19 October 2023, 30 October 2023, 8 November 2023, 23 November 2023 and 2 February 2024.

- b) Allowing creators to provide free previews of video content of a pornographic nature.
- 4.21 While we acknowledge MSL’s submission that they “do not want minors to access their site and have no reason to believe any minors have accessed their site”,<sup>51</sup> the evidence shows that MSL deliberately altered the functionality of the Mintstars platform in order to drive user engagement and increase revenue from the site, without assessing the increased risk this may have presented to under-18 users. At the very least, this suggests that MSL did not exercise the appropriate level of care or governance when making alterations to the platform, and the alleged contravention may therefore have occurred recklessly or deliberately.
- 4.22 In addition, we note that the alleged contravention may have resulted in a direct financial gain for the platform, both in terms of increasing user engagement and higher levels of paid user conversion, but also in avoiding the cost of implementing an effective age assurance measure for at least the Contravention Period.

## Mitigating factors

### Whether timely steps were taken to end the contravention

- 4.23 We note that MSL first indicated to Ofcom they were looking to implement age assurance technology on 15 May 2024, as a response to our compliance concerns.<sup>52</sup> It stated it had been speaking to [X] over the past several months to understand its options. MSL asked Ofcom to confirm that this would satisfy our requirements and the investigation would be concluded. Ofcom acknowledged<sup>53</sup> MSL’s intention and advised it was for MSL to decide on the most appropriate form of robust system for obtaining assurance as to the age of its potential viewers to prevent under-18s from accessing videos containing restricted material. Ofcom also suggested consulting a range of providers, considering systems other UK-established VSPs are implementing and consider future-proofing its system once it falls within the scope of the Online Safety Act 2023. Ofcom confirmed successful implementation of adequate age assurance would be a mitigating factor within our decision making.
- 4.24 On 3 June 2024, in its response to the Information Request, MSL stated it was in the process of implementing age verification and provided Ofcom with emails detailing a discussion between MSL and [X], an age estimation technology provider.
- 4.25 In a meeting with MSL on 9 July 2024, it stated it was waiting for Ofcom to approve the choice of age verification technology prior to implementation. However, as stated within the VSP Harms Guidance, we do not currently endorse specific technological tools or methods that a VSP provider should use to restrict access to pornographic material, although the chosen access control measure(s) should be effective in preventing access to that material for under-18s. We expect providers to stay informed of emerging technological developments and solutions for online safety and consider these as part of their on-going assessment of the measures appropriate for their service.<sup>54</sup>

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<sup>51</sup> Email from MSL to Ofcom on 16 July 2024.

<sup>52</sup> Email from MSL to Ofcom, 15 May 2024.

<sup>53</sup> Email from Ofcom to MSL 16 May 2024.

<sup>54</sup> Paragraph 4.117 of the [VSP Harms Guidance](#).

- 4.26 This view was reiterated to MSL in the meeting on 9 July 2024. As such, we do not consider that there were material steps taken to remedy the contravention until MSL implemented [redacted] age estimation technology.

### Cooperation during the investigation

- 4.27 Ofcom notes that MSL met its legal duty to co-operate with Ofcom over the course of the investigation into this matter to date and has taken steps to remedy its compliance with its duties under the VSP regime, considered above in paragraphs 4.23–4.26. We acknowledge, where information was requested, MSL responded within all set timeframes.

### MSL's applicable qualifying revenue

- 4.28 In accordance with the Act, any penalty we impose must be appropriate and proportionate to the contravention or failure for which it is imposed and must not exceed 5% of MSL's applicable qualifying revenue or £250,000, whichever is the greater.
- 4.29 In response to an information request, MSL provided information which supported its stated revenue of £276.72 for the tax year ending 31 January 2024. We also note MSL's submission that [redacted].
- 4.30 In considering the appropriateness and proportionality of the proposed penalty, we have taken these submissions into account. However, we also note that – as set out at paragraphs 3.27, 3.50 and 4.20-4.22 above, we find that MSL have benefitted financially through their contravention. First, the changes it implemented to the platform from November 2023 by not implementing adequate age verification processes were targeted to increase paid-for conversion rates by users. Second, MSL's failure to put in place effective age verification processes, contrary to its legal obligations, saved the cost of implementing such measures for a period of at least 10 months, when other similarly sized UK-established VSPs had already taken steps to come into compliance and invested in age assurance measures.

## Ofcom's conclusion on penalty

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- 4.31 In the specific circumstances of this case and having considered all of the relevant factors discussed above, Ofcom considers that it would be appropriate to impose a penalty of £7,000. This includes a 30% discount applied to the penalty of £10,000 which we would otherwise have set. That discount reflects resource saving achieved by Ofcom as a result of MintStars admitting liability and entering into a settlement with Ofcom.
- 4.32 We consider that this penalty is appropriate and proportionate to the contraventions that we found in this notice, namely that we have reasonable grounds for believing that, for at least the Contravention Period, MSL failed to take such of the measures set out in Schedule 15A of the Act as are appropriate for the purposes of protecting persons under the age of 18 from videos containing restricted material, and/or failed to implement those measures taken in such a way as to carry out that purpose.
- 4.33 Having regard to MSL's [redacted] revenue for the tax year ended 31 January 2024, while also considering the serious nature of the breach and the likely financial benefit resulting from the alleged contravention, our decision is that a penalty of £7,000 (after allowing the 30% discount for settlement, as set out above) would result in an appropriate and proportionate sanction.

## Interpretation

4.34 Words or expressions used in this Final Decision on the breach and penalty have the same meaning as in the Act except otherwise stated in this determination on the breach and penalty.

Signed by

Suzanne Cater

Director of Enforcement

23 January 2025