

## Your response

Question	Your response
<p data-bbox="204 465 774 499">Do you have any comments on our proposals?</p>	<p data-bbox="810 465 1034 499">Confidential? – No</p> <p data-bbox="810 539 1377 607">Thank you for the opportunity to give feedback on your workplan for 2022/23.</p> <p data-bbox="810 647 1361 748">We look forward to continuing to work constructively with Ofcom to deliver both VSP and then the Online Safety regime.</p> <p data-bbox="810 788 1382 1068">We recognise Ofcom’s discretion is determined by statute, and your processes are necessary to ensure they deliver effective and enforceable regulation, so most of our concerns are with the implications of the published first draft of the new Online Safety Bill, rather than intended as any criticism of Ofcom or its commitment to making the internet a safer place for children.</p> <p data-bbox="810 1144 1321 1211"><b>Para 1.13</b> Ofcom has been regulating VSPs since 2020 (1 November) not 2021.</p> <p data-bbox="810 1252 1382 1532"><b>Para 1.21 “Establishing regulation of online safety.</b> We will establish our regulation of UK established video-sharing platforms” – given Ofcom was given powers to regulate VSPs in 2020, only aiming to establish regulation by the end of 2022/23 is a disappointing timeframe amounting to 2½ years or more before any enforcement action is in prospect.</p> <p data-bbox="810 1572 1377 1818">The AVMSD covers just 20 VSP websites, so it does not bode well for the timescale likely to bring into force a wider online harms regime. The passage of the Online Safety Bill will create high expectations, and there is a risk the public will be disappointed if it has to wait years to see any real change.</p> <p data-bbox="810 1859 1377 2031"><b>Para 2.37</b> “In autumn 2022, we will publish our first annual VSP report, assessing progress against these aims and enabling users to see how their services are working to tackle harm” – this is a very passive statement, considering</p>

progress at that point in time not achievements and delivery, and looking how sites are “working to tackle harm”, not how they “have tackled harm.” The aims are also legal requirements, and now the regulations and guidance have been in place for a lengthy period of time, VSPs should have no excuse to spin out this any longer.

It has been suggested to us that Ofcom may prefer to wait for the Online Safety Bill to be in force to avoid having to enforce first under what will be a temporary measure. We are sure this will not be the case, given how long it will take before the new law is enforceable (see below) but the tone of the workplan does not do anything to allay fears that this rumour is true.

In France, the regulator (CSA) gave 6 adult sites 15 days notice to implement age verification. Mindgeek applied this to their main websites within that deadline. So it is not possible to argue that this is technically too difficult to do quickly. It can certainly be done in weeks not months, and as the French example shows, potentially days if the regulator is committed to delivering implementation of the law in a timely manner.

In correspondence with us, dated 14/12.21 Ofcom has stated:

*“the regulations are in force, we are taking the approach we think is the most proportionate, and it is not our view that adult VSPs who are currently failing to prevent/protect children through a lack of/insufficient protection measures should have any “grace period”, as such. Certainly, there is no delay in enforcing the AVMS directive which, as you rightly say, has been in force in the UK since November 2020.”*

We would like to see an equally clear and unequivocal language reflected in the workplan please. Without it, VSPs will resist the application of protective measures for children, and will continue to respond to Ofcom with plans not action.

Para 2.1 **Supporting the legislative process.**  
We would strongly suggest Ofcom considers both the implications for a timetable to enforcement and the mechanics of enforcement as part of the advice it provides to government.

#### **TIMESCALES**

Any harms relegated to secondary legislation are going to be delayed by 2-3 years after Royal Assent, as Ofcom must wait for the Secretary of State to designate Primary Priority Content and Priority Content, then secure Parliamentary approval for the schedules. Only then can Ofcom consult on and draft risk assessments and codes of conduct. The Secretary of State and Parliament will again then take their turn in reviewing, amending and approving.

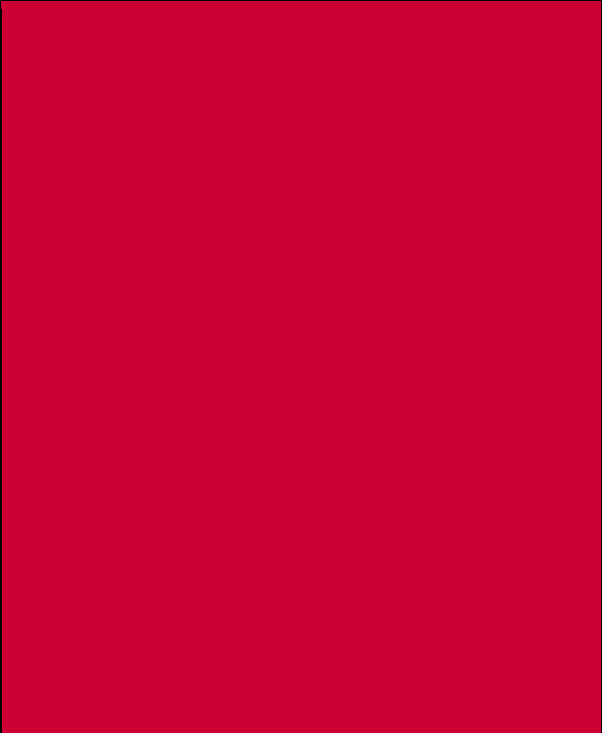
Ofcom is at great risk of being blamed for a delay by public which will have seen a law passed and expect their children to be better protected almost immediately.

It must be in Ofcom's interest to persuade government to short circuit this process for harms which will inevitably be listed as Priority or Primary Priority Content and put these on the face of the Bill in primary legislation.

We also suggest you publish a plan (albeit without a fixed start date) for how long you expect it to take you to reach a point where you could take enforcement action on harms not included in Primary Legislation, both to inform the debate in Parliament, and to manage public expectations. An illustrative plan of how fast implementation could be achieved for harms migrated from secondary to primary legislation would also be helpful to ministers as they consider this option – we would hope it could lead to enforcement within 6 months of Royal Assent.

#### **ENFORCEMENT**

The ability to enforce universally and at scale is also critical for Ofcom to win the cooperation of the adult industry. The commercial consequences of being one of a small number of high profile sites forced to apply age checks which would see 95% or more of their traffic (in



their estimation) diverted to second-tier sites, are so great that they would do all they can to evade the law. Only if they have confidence that the regulator will be taking swift action affecting the vast majority of sites on a set day known to all is there any realistic hope of widespread compliance.

This means Ofcom cannot be required to obtain a court order for each non-compliant site. It must be able to enforce on an industrial scale. It may be that a Court should approve the criteria for which sites are blocked, or their support services disrupted, and those sites can individually appeal but the regulator needs the power to act rapidly and widely.

Please complete this form in full and return to [planofwork@ofcom.org.uk](mailto:planofwork@ofcom.org.uk)