

Consultation response form

Consultation title	Consultation: Transparency Guidance
Organisation name	Mozilla

Question	Your response
<p>We welcome input from industry on the areas listed below. We encourage stakeholders to respond with feedback so that we can ensure that the guidance helps providers and other stakeholders understand:</p>	
<p>A) Ofcom’s powers and providers’ duties for transparency reporting, as well as Ofcom’s approach to implementing the transparency regime.</p> <p>B) Ofcom’s approach for determining what information service providers should produce in their transparency reports.</p> <p>C) Ofcom’s plans to engage with providers prior to issuing transparency notices, and on what matters, and whether the proposed engagement plan will be sufficient for helping services to comply with their duties.</p> <p>D) Ofcom’s plans to use the information in providers’ transparency reports in Ofcom’s own transparency reports.</p>	<p>Confidential? – N</p> <p>Mozilla welcomes the opportunity to submit to Ofcom’s consultation on draft transparency reporting guidance and is broadly supportive of Ofcom’s ambitions for “transparency reporting to be a key source of information for the public”, shining a light on services’ safety performance and empowering the public to make informed choices about the services they use”. At Mozilla we have always strongly advocated for a healthy, safe and innovative online ecosystem, with transparency being a key part of this.</p> <p>Public access to moderation and other platform governance data allow platforms and services to be monitored and held accountable, particularly the most complex and powerful platforms and services. Meaningful transparency and data access also allow consumers (and those acting on their behalf, including researchers, journalists, non-profits and regulators) to understand areas where users’ rights may be infringed, and to access available remedies, and to evaluate threats to public safety and civic discourse online.</p> <p>As it stands, tech platforms’ efforts at greater transparency, in part prompted by regulatory regimes such as the EU’s Digital Services Act (DSA), have differed significantly. Mozilla’s research has found that among the 19 major</p>

	<p>platforms investigated, data access and transparency practices vary widely. And while meaningful progress has been made to increase transparency and access to public data by some of the most prominent platforms, significant work remains to effectively facilitate research across all major platforms.</p> <p>Transparency regimes, like those set out within the EU’s Digital Services Act (DSA) and the Online Safety Act (OSA), have set an important legal standard through which we can leverage the benefits of data access and transparency. But the effectiveness of these regimes in supporting safety and accountability, as well as researchers, hinges on the usefulness of the information they provide.</p> <p>Following this, we set out how regulators like Ofcom can ensure that these frameworks, including the OSA’s transparency regime, are as effective as possible, for example via:</p> <ul style="list-style-type: none"> ● Appropriate standardisation; ● Clear and coherent regulatory frameworks; and ● Ongoing engagement with a broad group of stakeholders. <p>Mozilla, as the Mozilla Foundation¹ and the Mozilla Corporation,² is both a producer and a consumer of transparency data, as well as an advocate for independent researchers and academics who rely on that data in their work. As such, we are delighted to provide our unique perspective to Ofcom as it progresses its thinking on transparency reporting guidance.</p>
<p>Are there any aspects in the draft guidance where it would be helpful for additional detail or clarity to be provided?</p>	<p>N</p> <p>We welcome Ofcom's efforts to provide clear and comprehensive information on the transparency reporting process for services that may be subject to its requirements. For the transparency regime to be successful, it is crucial for requirements to be clear and</p>

¹ The Mozilla Foundation is a non-profit organisation engaging in global programs and advocacy towards our mission of more innovation, more competition and more choice online.

² The Mozilla Corporation is a wholly owned subsidiary of the Foundation producing a number of products that allow users to access, navigate, or exchange information on the Internet.

	<p>systematic in order to enable services to understand and comply uniformly and effectively.</p> <p>As part of this, we would encourage Ofcom to clearly and unambiguously set out what information services need to gather, and to provide comprehensive guidelines for how data should be structured and organised in reports with sufficient lead time to implement data collection. Crucially, Ofcom should also be clear as to how often, and when, companies will be required to report.</p> <p>As currently set out within the guidance, we understand that Ofcom may only issue a transparency notice to inform a company when and what it must report once the register of categorised services is published and that Ofcom may “repeat this process at regular intervals when the register is updated, at which point services may be added or removed from the register”.</p> <p>We are concerned that the lack of consistency from year-to-year will create a significant degree of regulatory uncertainty for services on the threshold of categorisation coming in and out of scope, as well as irregularity in the data collected from one year to the next. As set out below, we are also concerned that the ambiguity around the distinction of ‘core’ versus ‘thematic’ data may create additional regulatory uncertainty. For services in scope, these aspects may encumber a common understanding or interpretation of requirements from developing over time. For researchers, this inconsistency will make it harder to compare and contrast information between transparency reports.</p>
<p>Are the suggested engagement activities set out in the draft guidance sufficient for providers to understand their duties and Ofcom’s expectations?</p>	<p>Confidential? – N</p> <p>Mozilla welcomes the consultative approach Ofcom has applied to its role as online safety regulator. Mozilla would encourage Ofcom to expand its suggested engagement activities so that, in addition to service providers, a broader set of stakeholders are consulted on an ongoing basis once the transparency regime is in force. This should include stakeholders impacted by</p>

	<p>the transparency of service providers (e.g. end users) and whose expertise can contribute to the effectiveness of the regime (e.g researchers, civil society, and other domain experts).</p> <p>In particular, Mozilla would encourage Ofcom to consider opportunities to involve “transparency delegates” and the important role these delegates can play in ensuring that transparency reporting is useful to different stakeholders. In some cases, information may be too complex for some stakeholders, in which case delegates with aligned interests can act as proxies for the stakeholders. (For example, car buyers are not asked to evaluate the safety of each car model themselves, but instead they delegate assessing the transparency information about car safety features to standards and regulatory bodies). Similarly, some transparency information may be suitable for regulators or other third parties, rather than platform users. In these instances, transparency delegates, with the expertise and resources needed to filter and assess transparency reports to make them useful to other stakeholders, should have the opportunity to engage with Ofcom around the publication of the reports. We also encourage Ofcom to review our report on AI Transparency in Practice for additional in depth insights.</p>
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Question	Your response
<p>We are also seeking input that will help us understand if there are other matters that Ofcom should consider in our approach to determining the notices, beyond those that we set out in the guidance. The questions below seek input about any additional factors Ofcom should take into account in various stages of the process, including: to inform the content of transparency notices; in determining the format of providers’ transparency reports; and how the capacity of a provider can be best determined and evidenced.</p>	
<p>Are there any other factors that Ofcom might consider in our approach to determining the contents of notices that are not set out in the draft guidance?</p>	<p>N</p> <p>From the draft guidance set out, we understand that Ofcom will consider a broad range of factors when determining the contents of notices. This includes in particular the kind of service it is, the functionalities of the service and the service’s own capacity. While it is right that Ofcom acknowledges the nuance of</p>

different platforms' functionalities and capacity, with capacity being particularly important (further detail provided below), it is important to consider the value of standardisation for similar types of platforms for cross-platform research and effective compliance. We encourage distinctions across different types of platforms, where relevant, for instance between e-commerce, search, and social platforms but otherwise recommend standardisation across similar types of platforms.

We are encouraged to see Ofcom acknowledge the value of analysing patterns or trends across industry over time within the draft guidance. However, we are concerned about the lack of clarity on what constitutes 'core' versus 'thematic' information and the impact this will have on services' ability to comply as well as regulators' and researchers' ability to assess trends and patterns. As set out within the draft guidance, we understand that 'core' information will be consistently requested and reported on a yearly basis. On the other hand, 'thematic' information will be based on areas that Ofcom has identified based on its areas of regulatory focus each year.

This has the potential to create additional compliance burdens for services. For some requirements at a sufficiently high level of generality, for example a requirement to describe an internal governance process, or to share the level of investment in content moderation, responding to ad hoc requests may be relatively straightforward. However, requests for data-heavy information, for example around abuse reports and moderation actions covering a particular area of online harm, will require services to be given sufficient advance notice to ensure their systems are tracking the correct data. Further clarity and specific parameters around what constitutes 'core' versus 'thematic' information would be welcomed. We would encourage Ofcom to clearly designate such data-dependent information to be 'core' information less subject to year-to-year variation, so that covered platforms can

	<p>reasonably predict what data to collect and design their systems accordingly.</p> <p>When considering this distinction, we believe that data about content engagement and account growth should be considered ‘core’ information that is collected on a regular basis. While this data is essential for monitoring civic discourse and election integrity, platforms rarely tend to include this in their transparency reports. For example, Meta had previously offered this through CrowdTangle, which was terminated in August, but this is not currently replicated in Meta’s replacement tool, the Meta Content Library.</p>
<p>Is there anything that Ofcom should have regard to (other than the factors discussed in the draft guidance) that may be relevant to the production of provider transparency reports? This might include factors that we should consider when deciding how much time to give providers to publish their transparency reports.</p>	<p>Confidential? N</p> <p>It is critical that regulators globally provide clear and harmonised frameworks for transparency. As part of this, Ofcom should consider the transparency requirements that providers face in other jurisdictions. Currently, the EU has the most developed framework under the DSA. Given this, where a transparency notice contains requirements that overlap with those which the recipient platform is already obligated to comply with under DSA, Ofcom should endeavour to maintain consistency with the DSA schemes and definitions. This will help to improve the compliance burden, which is especially important for smaller and medium-sized companies, and also allow users and researchers to compare like-for-like across regulatory regimes.</p> <p>Further regulatory alignment should also be achieved via harmonising requirements around advertising transparency. Currently the DSA requires that the largest online platforms and search engines (those designated by the EU Commission as “Very Large Online Platforms and Search Engines”) have public ad libraries. These requirements, and the ad libraries generated by services as a result, are critical tools for the public to assess the role of commercial advertising and paid influence on services which are used by billions every day.</p>

	<p>We believe the UK would benefit from similar requirements under the OSA.</p> <p>In March 2019, Mozilla and a cohort of independent researchers published five guidelines that ad repository APIs must meet in order to support election influence monitoring and independent research. We would encourage Ofcom to consider the recommendations in this report when developing ad repository guidelines, alongside recent research analysis we have conducted on the ad transparency tools maintained by 11 of the world's largest tech companies. This research revealed significant inconsistencies in the form and effectiveness of tools across companies, underlining the need for clear, robust and uniform guidelines to ensure effective transparency and enable researchers, and the public, to make comparisons between platforms. The research also emphasises the need for maintenance of adequate documentation and support, to empower researchers and other transparency delegates to make use of these tools.</p>
<p>What are the anticipated dependencies for producing transparency reports including in relation to any internal administrative processes and governance which may affect the timelines for producing reports? What information would be most useful for Ofcom to consider when assessing a provider’s “capacity”, by which we mean, the financial resources of the provider, and the level of technical expertise which is available to the service provider given its size and financial resources?</p>	<p>N</p> <p>We recognise Ofcom’s acknowledgement that “relevant service providers will have between 2 and 6 months to produce their transparency reports in response to a notice” and that “timings will vary depending on factors such as the scope and nature of the information required by the notice and the capacity of the provider”. A flexible approach to timing is important given the differing needs and capacity of service providers, and the need to ensure that compliance does not place a disproportionate burden on smaller and medium-sized providers. It is also important where relevant to maintain consistency with DSA obligations to reduce the burden on platforms and ensure consistency across regimes.</p> <p>This is particularly relevant to requirements to publish data. Building the data-gathering and organisational infrastructure to meet these</p>

	<p>requirements can take months or years, and this is likely to be a greater burden for companies with fewer resources. Crucially, there is also often no way to reconstruct this data retrospectively. If platforms have to recreate the data after the fact, they will inevitably omit things or get some of it wrong.</p> <p>Therefore, it is crucial that all providers, but especially smaller ones or those on the threshold of categorisation, know in advance and in detail what they will be required to publish, with sufficient lead time to implement data collection. Providers should be notified 3-6 months prior to the start of the window of time about which they will subsequently be required to produce data. This notice should include information on the data they will be required to produce and how it should be organised and collated.</p> <p>Ofcom should maintain ongoing dialogue with smaller and medium-sized organisations once the regime is in place, to understand any further support they may need with compliance.</p>
<p>Are there any matters within Schedule 8, Parts 1 and 2 of Act that may pose risks relating to confidentiality or commercial sensitivity as regards service providers, services or service users if published?</p>	

Question	Your response
<p>Finally, we are also seeking input into any matter that may be helpful for ensuring Ofcom's transparency reports are useful and accessible.</p>	
<p>Beyond the requirements of the Act, are there any forms of insight that it would be useful for Ofcom to include in our own transparency reports? Why would that information be useful and how could you or a third party use it?</p>	<p>Confidential? – N</p> <p>We are pleased to see Ofcom set out how its own transparency reports will offer insights into how individual services will address risks and mitigate harms on their services. We believe that reports like these are a helpful tool for ensuring the accountability of governments and institutions as well as for observing how regulators are requesting content be removed or not removed. To ensure its effectiveness, it is</p>

	critical that these reports include detail on specific actions platforms and services have taken in response to notices and information uncovered within transparency reports.
Do you have any comment on the most useful format(s) of services' transparency reports or Ofcom's transparency reports? How can Ofcom ensure that its own transparency reports are accessible? Provide specific evidence, if possible, of which formats are particularly effective for which audiences.	Confidential? – N Where appropriate and possible, Ofcom should aim for standardisation in the format of services' transparency. Here, the same principle applies to the format of reports as to their content - standardisation makes it easier for users, researchers and other interested parties to engage with the reports and analyse the behaviour of providers. In addition, platforms should create multi-language documentation to improve accessibility.

Question	Your response
Please provide any other comments you may have.	
General comments	Confidential? –N Mozilla welcomes the opportunity to share the following additional comments on this guidance and on promoting transparency online more broadly: <i>Self-reporting is not sufficient to guarantee trust in data and transparency reporting: Ofcom should consider how to foster trust in the quality of data included in services transparency reports. This will be key to making these reports as useful as possible to domain experts and others. To achieve this, it is important that data quality and accuracy is assured and is also perceived as trustworthy. Both can be bolstered when services allow third-party research to take place into their services, for instance data sampling. Mozilla would encourage Ofcom to consider the example of the Digital Services Act takedown database in this respect. This database relies on self-reported data by companies, so its value depends on researchers having confidence in the accuracy of its data. Given that inconsistencies between the database and transparency reports have already been found,</i>

	<p>we cannot rely on self-reporting alone to generate the necessary trust in transparency data.</p> <p><i>We need a shared definition of “public data” and who should get access to it:</i> In general, regulators, platforms, and researchers lack a shared definition of “public data.” Each platform has made different decisions about what data to share, and in many cases those choices may differ from researcher expectations. In addition, platforms have varying or ambiguous criteria for who is eligible to access data. This lack of clarity and standardisation makes it difficult for the platforms to provide the best offerings and for researchers to conduct research. Would therefore encourage Ofcom to work with other regulators, as well as researchers and other experts, globally to work together to tease out a common definition.</p> <p><i>Data access for researchers can support privacy:</i> Data access for researchers is often depicted as an unacceptable risk to user privacy. But privacy-protecting research is itself necessary to understand and address harmful data practices and abuse of personal data. Similarly, data access is needed to protect consumers by allowing for scrutiny of a company’s practices beyond their promises. And data access forms the bedrock of evidence gathering for enforcement action. In other words, data access is not just in the interest of the research community - it is central to accountability.</p>
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