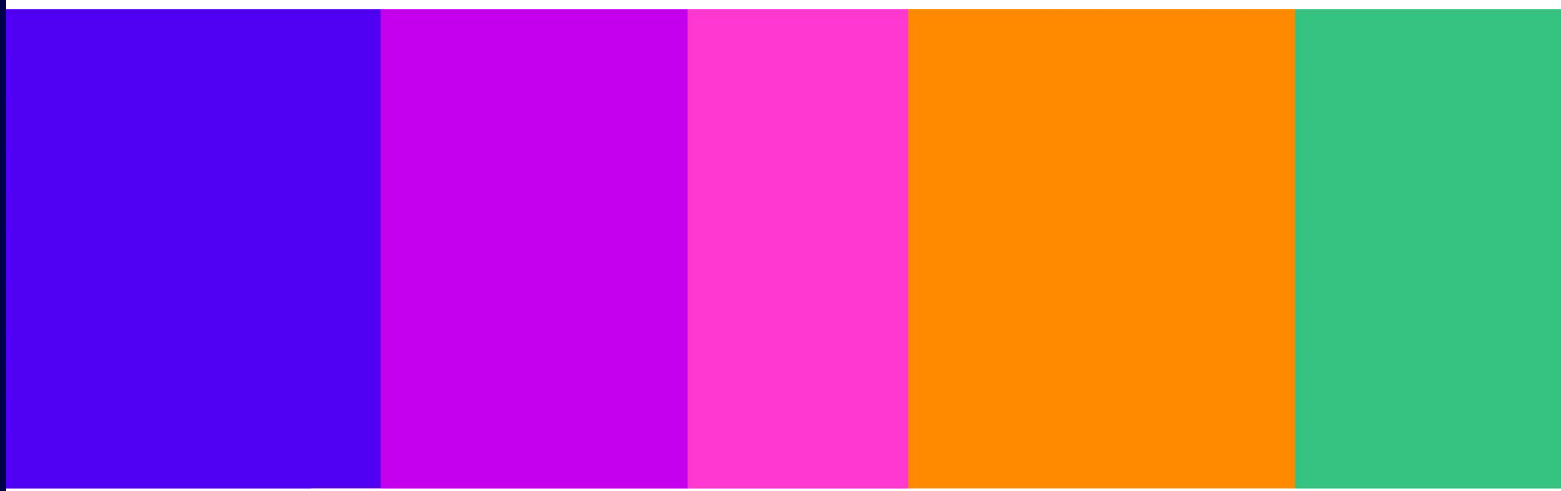


Final Decision

CW/01283/04/24: Investigation into Fenix International Limited (Fenix)'s compliance with its duty to accurately respond to information requests

Non-confidential version – redactions are indicated with [REDACTED]

Penalty issue date: 26 March 2025



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1. Overview

- 1.1 This Final Decision sets out the Office of Communications' ('Ofcom') decision on breach and penalty under Part 4B of the Communications Act 2003¹ (the 'Act') in respect of Fenix International Limited ('Fenix'), whose registered company number is 10354575 and registered office is 9th Floor, 107 Cheapside, London, EC2V 6DN.
- 1.2 This is our Final Decision that sets out our determination on Fenix's compliance with section 368Y(3)(b) and section 368Z10 of the Act. It sets out why we found Fenix to have contravened its duties and why we are imposing a penalty of £1,050,000 on Fenix.
- 1.3 Fenix is the provider of the platform OnlyFans. OnlyFans is a Video Sharing Platform ('VSP') service notified to Ofcom under Part 4B of the Act.

Ofcom's findings – in brief

Ofcom determined that Fenix has contravened its duties under the following sections of the Act:

- a) Section 368Y(3)(b): a duty to comply with a requirement for information under section 368Z10; and
- b) Section 368Z10(6): a duty to provide information in such manner and form and within such reasonable period as may be specified by Ofcom in a demand for information under section 368Z10.

In accordance with our regulatory enforcement guidelines, Fenix were provided the option to enter a settlement process with the investigation. On 12 March 2025, Fenix confirmed its decision to settle and agreed that by entering the settlement agreement it was waiving its procedural rights, including its rights to make written representations or have an oral hearing on the substance of the provisional findings. Fenix also confirmed that by choosing to settle the investigation it would not challenge or appeal the determination.

Ofcom has decided to impose a penalty of £1,050,000 on Fenix for contravening the requirements set out above. This includes a 30% discount applied to the penalty figure of £1,500,000 which we would have otherwise imposed had Fenix not requested to settle the investigation. This discount reflects resource savings achieved by Ofcom as a result of Fenix's agreement to settle by admitting full liability.

¹ [Communications Act 2003 \(legislation.gov.uk\)](https://legislation.gov.uk)

2. Legal Framework

- 2.1 The VSP regime is set out in Part 4B of the Communications Act 2003 (the ‘Act’) and stems from the revised European Audiovisual Media Services Directive (AVMSD) 2018.² The requirements under this regime came into effect in November 2020. In this Final Decision we refer to the regulatory framework set out in Part 4B of the Act as ‘the VSP framework’ or the ‘VSP regime’.

The VSP providers’ duties to take appropriate measures

- 2.2 Under the VSP regime, VSP providers must take appropriate measures to protect:³
- a) the general public from video content likely to incite violence or hatred against protected groups, and content which would be considered a criminal offence under laws relating to terrorism; child sexual abuse material; and racism and xenophobia – which is referred to as ‘relevant harmful material’; and,
 - b) under-18s from videos containing R18 or unclassified material, and other material that might impair their physical, mental, or moral development (‘restricted material’).
- 2.3 Relevant harmful material and restricted material are collectively referred to as ‘harmful material’.
- 2.4 The VSP legislation lists some measures (the ‘schedule 15A measures’) that VSP providers must take, if appropriate, to fulfil their duty to protect users from harmful material.⁴
- 2.5 VSP providers are required to determine which of the schedule 15A measures are appropriate for their platform considering certain factors set out in the Act.⁵
- 2.6 Further to the above, VSP providers have a duty to implement the Schedule 15A measures they take in such a way as to carry out the purpose for which they were taken.⁶

Ofcom’s role and powers

- 2.7 Ofcom has been the regulator of UK-established VSPs since November 2020. As part of our functions under the VSP regime, we monitor how persons under 18 are protected from videos and audiovisual commercial communications containing restricted material, such as material which might impair their physical, mental or moral development.

² The revised AudioVisual Media Services Directive was transposed into UK law under regulations made by the Secretary of State, which introduced Part 4B of the Communications Act 2003.

³ Section 368Z1(1) of the Act.

⁴ Schedule 15A of the Act.

⁵ Section 368Z1(4) of the Act.

⁶ Section 368Z1(2) of the Act.

- 2.8 One of our core functions under the regime is to understand and monitor the various age assurance measures taken and implemented by VSP providers and analyse its efficacy in protecting children from restricted material, including pornography.⁷

Statutory information requests

- 2.9 Section 368Z10 of the Act gives Ofcom powers to require the provision of information which it considers necessary for the purpose of carrying out its functions under the VSP regime. Among other things, Ofcom can require information for the purposes of producing a transparency report⁸ and for the purpose of monitoring which of the measures set out in Schedule 15A are taken by VSPs and how those measures are being implemented.⁹
- 2.10 Under section 368Z10(6), a person required to provide information under section 368Z10 of the Act has a duty to provide the information “in such manner and form and within such reasonable period as may be specified by the authority in the demand for information”.
- 2.11 Furthermore, a VSP provider also has a statutory duty under section 368Y(3)(b) of the Act to comply with a requirement for information under section 368Z10.

VSP and transparency reports

- 2.12 Ofcom’s regulatory tools under the VSP regime include the power to produce and publish reports about the measures taken by VSP providers for the purposes of protecting users from harmful material, and the ways in which such measures are implemented.¹⁰
- 2.13 In order to foster an open approach to our work in this area we regularly publish such reports on our external website.¹¹ We refer to these reports as ‘VSP reports’ or ‘transparency reports’ throughout this Final Decision.
- 2.14 We take our role in promoting greater transparency from VSPs very seriously; to ensure our work is impactful, it is essential that the information we publish is meaningful and accurate.

Ofcom’s Enforcement powers

- 2.15 Under section 368Z2, Ofcom has power to give an enforcement notification and/or impose a financial penalty on a VSP provider where Ofcom determines that a VSP provider has contravened or is contravening its duties under section 368Y of the Act. An enforcement notification is a notification which specifies the determination as to contravention and imposes requirements on the provider to take such steps for complying or remedying the consequences of the contravention as may be specified in the notification.¹²
- 2.16 Further to the above, under section 368Z10(7), section 368Z2 also applies in relation to a VSP provider’s failure to comply with a demand for information under section 368Z10 as if it were a contravention of section 368Y.

⁷ [Section 368E](#) of the Act; definition of restricted material.

⁸ Section 368Z10(3)(h) of the Act.

⁹ Section 368Z10(3)(g) of the Act.

¹⁰ Section 368Z11 of the Act.

¹¹ [Video-sharing platforms: Ofcom's plan and approach](#)

¹² Section 368Z2(3) of the Act

- 2.17 Where Ofcom decides to impose a penalty on a VSP provider under section 368Z2, the maximum penalty amount is 5% of the VSP provider's applicable qualifying revenue¹³ or £250,000, whichever is the greater amount.¹⁴
- 2.18 We investigate compliance with the VSP regime in line with our enforcement guidelines for regulatory investigations.¹⁵

¹³ See section 368Z4(3)-(5) of the Act for the meaning of application qualifying revenue.

¹⁴ Section 368Z4 of the Act.

¹⁵ [Regulatory Enforcement Guidelines for investigations \(ofcom.org.uk\)](https://www.ofcom.org.uk/regulatory-enforcement-guidelines-for-investigations)

3. Factual Background

Only Fans

- 3.1 In May 2021, Fenix notified Ofcom that OnlyFans was a VSP with the required connection to the UK to fall in scope of the VSP regime.¹⁶ On the basis of the information provided to Ofcom, we consider OnlyFans to fall in scope of the VSP regime and Fenix to be subject to the VSP provider's duties.
- 3.2 Under section 368Z10(1), VSP providers, like Fenix, are among the persons from whom Ofcom may require information for the purposes of carrying out our functions under the VSP regime.

The 2022 information notice

- 3.3 On 6 June 2022 Ofcom issued a statutory information request (the '2022 Notice')¹⁷ which sought information on the Schedule 15A measures Fenix had put in place to protect users on the OnlyFans platform, including its age assurance measures. The 2022 Notice stated that Ofcom required the information for the purposes of regulatory monitoring and producing a VSP report in line with sections 368Z10(g) and (h) of the Act.
- 3.4 The 2022 Notice asked specific questions about OnlyFans' third-party age estimation solution provided by [X]. Question 6 of Annex 4 in the 2022 Notice asked Fenix how its age estimation technology trial had worked and requested submission of any supporting documents.
- 3.5 The response Fenix provided to question 6 did not include the detail requested, and so Ofcom sought further clarification on 25 August 2022.¹⁸
- 3.6 On 5 September 2022, Fenix responded to our clarificatory questions stating:
- "...[X] is an age estimation tool which is **set for the age of 23**. [X], by contrast, is an age verification tool designed to verify a person's age..."¹⁹*
- 3.7 The information about OnlyFans' facial estimation challenge age provided on 5 September 2022 was published on 20 October 2022 in Ofcom's 'Year 1 VSP report: Ofcom's first year of video-sharing platform regulation'.²⁰
- 3.8 Fenix used a third-party provider for its age estimation tool as its operational age assurance measure on its platform, OnlyFans. The third-party provider requires the service user to select a 'challenge age', also known as an age assurance threshold, before using the age estimation tool. Once a challenge age is selected the tool will require the prospective user (also known as 'fan') to upload a live image and will estimate the user's age. If the user is estimated as being above the challenge age they may continue to create an account on the

¹⁶ Email correspondence dated 4 May 2021 between Ofcom and Fenix whereby it confirms it is a notified provider within the meaning of 368S of the Act.

¹⁷ Sent by email from [X] (Ofcom) to [X] (OnlyFans) on 6 June 2022.

¹⁸ Email thread dated 25 August 2022 from Information Registry to Fenix.

¹⁹ Fenix response to clarification questions. Annex 4, question 6 on page 6.

²⁰ [Ofcom's first year of video-sharing platform regulation, page 99.](#)

OnlyFans platform. If a user is not estimated to be above the challenge age they will be required to verify that they were over 18, using OnlyFans' secondary age assurance provider.

- 3.9 Age estimation technologies have a margin of error which typically require service users to select a challenge age with a suitable 'safety buffer' i.e. selecting a higher challenge age than the age of interest to allow for any overestimation.
- 3.10 The third-party age estimation provider used by OnlyFans stated [redacted]²¹ '... just as human estimators have a capacity for error, so does facial age estimation. To manage this potential for errors, we recommend using facial age estimation as part of a strategy such as the British Beer & Pub Association's 'Challenge 21'...
- 3.11 As noted above, as part of its response to the 2022 Notice, Fenix informed Ofcom that it had selected a challenge age of 23.

The 2023 information notice

- 3.12 Ofcom issued Fenix with another statutory information request on 23 June 2023 (the '2023 Notice').²² This notice focused on OnlyFans' age assurance measures.
- 3.13 In its response to the 2023 Notice, provided on 4 August 2023, Fenix stated:
- "In 2021, OnlyFans also began using [redacted]... for age estimation for Fans in certain countries, including the UK.... OnlyFans has adopted a cautious approach to this exercise and sets the minimum **age limit at 23...**"²³*

Discovery of inaccurate challenge age and reporting to Ofcom

- 3.14 On 3 January 2024, OnlyFans age estimation provider delivered a presentation to Fenix. During this presentation slides were presented which stated that the challenge age for OnlyFans users ('fans') was set to 20, not 23.²⁴ This was contrary to Fenix's understanding at that time.
- 3.15 Fenix queried this with its provider, and on 4 January 2024 the provider confirmed that the age estimation software used by OnlyFans was set to a challenge age of 20.²⁵ Fenix's Senior Person A informed Senior Person B and Senior Person C of the discrepancy and asked Senior Person C to investigate.
- 3.16 On 9 January 2024, the Senior Person C confirmed that OnlyFans' challenge age was set at 20 and had been since November 2021.²⁶

²¹ [redacted]

²² Sent by email from [redacted] (Ofcom) to [redacted] (OnlyFans) on 23 June 2023

²³ Fenix response to annex 3 question 1 on page 16. Response sent by email on 4 August 2023.

²⁴ Letter sent by Fenix to Information Registry on 26 January 2024 reporting challenge age error.

²⁵ Entry for 4 January 2024 in the timeline provided by Fenix to Ofcom on 28 August 2024, Exhibit 4 of Fenix's response to the first information investigatory request issued by Ofcom on 31 July 2024.

²⁶ Entry for 9 January 2024 in the timeline provided by Fenix to Ofcom on 28 August 2024, Exhibit 4 of Fenix's response to the first information investigatory request issued by Ofcom on 31 July 2024.

- 3.17 It was decided that OnlyFans would alter its challenge age to 23, and on 16 January 2024 this increased challenge age went “live” on onlyfans.com and took effect for all UK fans.²⁷
- 3.18 On Friday 19 January 2024, Fenix completed its concurrent review of the challenge age setting and elected to change the challenge age to 21. Fenix contacted the Ofcom VSP supervisory team on the same date and requested a meeting.²⁸ The Ofcom team offered a meeting on 22 January 2024.
- 3.19 On 22 January 2024, Fenix met with Ofcom to notify us that it had provided incorrect information in response to the 2022 and 2023 Notices.²⁹
- 3.20 OnlyFans followed up this meeting with a letter on 26 January 2024.³⁰ In this letter Fenix stated:
- “On 4 July 2022, in response to an Information Notice dated 6 June 2022, OnlyFans ...had stated in previous correspondence with Ofcom that the threshold was set to 23 years old. These statements were made in good faith based on OnlyFans’ knowledge at the time, but now require amendment. We have recently become aware that, at the time we made these prior statements, the age estimation threshold for UK fans through our third-party age assurance provider [X], was set to 20 years old.”*
- 3.21 On 5 March 2024, in response to informal questions sent by the supervision team to better understand the background and impact of the potential information and age assurance breach, Fenix confirmed that the challenge age for its age estimation measure had been set to 20 for over 2 years - from 1 November 2021 to 9 January 2024, and that a ‘human programmer error led to the challenge age setting of 20’.³¹
- 3.22 On 1 May 2024, Ofcom opened an investigation³² to review whether Fenix had failed to comply with its duties to provide complete and accurate information in response to two statutory requests. The investigation also considered whether Fenix had effectively implemented its age assurance measures on OnlyFans in such a way as to sufficiently protect under-18s from restricted material in accordance with section 368Z1(2) of the Act and if it had failed to cooperate with Ofcom in accordance with its duties under section 368Y(3)(c).³³
- 3.23 On 31 July 2024, Ofcom issued Fenix with a statutory information request³⁴ seeking information on how it had implemented its age assurance measures on OnlyFans and sought further information on the discovery of the misconfiguration. The information request also asked “whether OnlyFans took any steps to ensure the accuracy of the information before providing it, and if so, what steps?”.³⁵

²⁷ Entry for 11 January 2024 in the timeline provided by Fenix to Ofcom on 28 August 2024, Exhibit 4 of Fenix’s response to the first information investigatory request issued by Ofcom on 31 July 2024.

²⁸ Entry for 19 January 2024 in the timeline provided by Fenix to Ofcom on 28 August 2024, Exhibit 4 of Fenix’s response to the first information investigatory request issued by Ofcom on 31 July 2024.

²⁹ Letter sent by Fenix to Information Registry on 26 January 2024 reporting error.

³⁰ Letter sent by Fenix to Information Registry on 26 January 2024 reporting error.

³¹ OnlyFans response on 5 March 2024 to the informal questions (1.2 and 7) Ofcom sent on 20 February 2024.

³² Ofcom’s [enforcement bulletin](#) announcing the opening of our investigation.

³³ On 4 February 2025, we [announced](#) that we had revised the scope of the investigation, and closed our enquiries into Fenix’s compliance with section 368Z1(2) and section 368Y(3)(c) of the Act.

³⁴ Ofcom’s first investigatory information request dated 31 July 2024.

³⁵ Ofcom’s first investigatory information request dated 31 July 2024.

3.24 On 28 August 2024, Fenix responded stating:

“When Fenix receives an RFI from Ofcom, primary responsibility for responding to that RFI falls to the Legal Team. In 2022, this responsibility was with Senior Person D & Senior Person E....In the case of the responses about the [X] challenge age that Fenix previously provided to Ofcom, the responsible executive relied on statements and confirmations provided by his/her team regarding the age estimation challenge age.”³⁶

3.25 Fenix also further elaborated on how its challenge age had been implemented and explained:

“When the age estimation workflow moved from the test phase to the production phase in November 2021, Fenix intended to set the UK fan age estimation challenge age at 23. The individual programmer, who is contracted to work for Fenix, inadvertently set the age estimation challenge age to 20 instead of 23.”³⁷

³⁶ Fenix response on 28 August 2024 to information request dated 31 July 2024. Annex 3 question 1.

³⁷ Fenix response dated 28 August 2024 to our first investigatory information request. Annex 1 question 1.

4. Determination of contravention

- 4.1 For the reasons set out below, we determined that Fenix has contravened its duties under the following sections of the Act:
- a) 368Y(3)(b): a duty to comply with a requirement for information under section 368Z10; and
 - b) 368Z10(6): a duty to provide information under section 368Z10 in such a manner and form and within such reasonable period as may be specified by Ofcom in the demand for information.

Determination of contravention of section 368Y(3)(b) and section 368Z10(6)

- 4.2 In accordance with section 368Z10(6) of the Act, Fenix was under a duty to provide information required under section 368Z10 of the Act in such manner and form and within such reasonable period as specified by Ofcom in both the 2022 and 2023 Notices. Similarly, in accordance with section 368Y(3)(b), Fenix was under a duty to comply with information gathering requirements under section 368Z10 on both occasions.
- 4.3 Ofcom considers that an essential and necessary part of the duty imposed by section 368Z10(6) – to provide information *‘in such manner and form and within such reasonable period as may be specified by the authority in the demand for information’* – is that such information provided must be accurate and complete. A failure to provide accurate and complete information in response to such a demand for information would fundamentally undermine the statutory purpose of Ofcom’s powers to request such information and its ability to rely on it for the purpose of exercising its functions under the Act.
- 4.4 In the context of obtaining information from established businesses, such as Fenix, for the purposes of publishing transparency reports, we expect that appropriate and robust systems and checks are in place to ensure information is properly interrogated, crosschecked, and reviewed through appropriate governance channels prior to it being submitted in response to a formal information request. This is to prevent inaccurate information being relied upon by Ofcom when carrying out its functions relating to VSPs.
- 4.5 In addition, after information is submitted in response to a formal request for information, Ofcom expects appropriate governance processes to be in place to ensure a provider’s regulatory team, and ultimately Ofcom, is made aware of any inaccurate information provided at the very earliest opportunity, to prevent delay or obstruction to our work.
- 4.6 The 2022 Notice and 2023 Notice (together, the ‘Notices’), issued under and in accordance with section 368Z10, stated that the information had to be on time, complete and accurate and that there may be legal repercussions if Fenix failed to provide accurate responses to the questions within the Notices.

- 4.7 As noted at paragraphs 3.19 to 3.21 above, on 22 January 2024, Fenix notified Ofcom's supervision team (verbally and later in writing) that it had provided inaccurate information in response to both the 2022 and 2023 Notices.
- 4.8 As such, and in accordance with the regulations cited within the Notices, we consider that providing inaccurate or incomplete information means the information was not provided in the manner and form specified, and we therefore found that Fenix was in breach of section 368Z10(6) and also section 368Y(3)(b).
- 4.9 We note that this breach continued for a period of over 16 months in total, from 5 September 2022 (when Fenix responded to the 2022 Notice) until 22 January 2024, when it advised Ofcom of the inaccurate submission. The length of time taken to discover the error in OnlyFans' age estimation threshold not only calls into question the robustness of the processes Fenix had in place to ensure information it provided to Ofcom was complete and accurate, but also creates cause for concern with the overall governance processes the service had in place to test and monitor the efficacy of its platform's safety measures. If Fenix had more robust governance processes in place - including fact-checking the information it had provided - the misconfiguration of the challenge age for the age estimation measure would likely not have taken 26 months to discover.

5. Determination on the appropriate level of penalty

- 5.1 As explained in section 2 above, section 368Z2(1)(b) of the Act gives Ofcom the powers to impose a financial penalty on a VSP provider in accordance with section 368Z4 if Ofcom determines that a provider is contravening or has contravened section 368Y of the Act and section 368Z10 of the Act. This penalty shall not exceed 5% of the provider's applicable qualifying revenue or £250,000, whichever is the greater amount, and as Ofcom determines to be appropriate and proportionate to the contravention or failure.

Penalty

- 5.2 For the reasons set out in paragraphs 4.1 to 4.9, Ofcom found that Fenix contravened its duties under section 368Y(3)(b) and section 368Z10 of the Act between 5 September 2022 and 22 January 2024. As a result, we have imposed a penalty of £1,050,000 on Fenix in respect of this contravention. This includes a 30% discount applied to the penalty figure of £1,500,000 which we would have otherwise imposed, reflecting the resource savings achieved by Ofcom as a result of Fenix admitting liability and its completion of the settlement process.
- 5.3 Ofcom has published Penalty Guidelines which set out the factors we may take into account when determining the appropriate amount of a financial penalty.³⁸ In accordance with section 368Z4(2) of the Act, we have had regard to the Penalty Guidelines and have set out below our consideration of these factors, to the extent that they are relevant to this case. We have also considered whether there are any relevant precedents, noting that while past decisions may be relevant, they are not binding and Ofcom may, considering the circumstances of each case, impose higher penalties in future cases than in previous ones to secure effective deterrence.³⁹ On the basis of the various elements considered in this section of our Final Decision, we consider that the amount of penalty proposed in this case is both appropriate and proportionate, while being sufficiently high to effectively deter future breaches.

Deterrence

- 5.4 As set out in our Penalty Guidelines, the central objective of imposing a penalty is deterrence.⁴⁰ Any penalty we set should be sufficiently high to deter the business from contravening regulatory requirements, and additionally to deter the wider industry from doing so. It must therefore be sufficiently high to incentivise Fenix at an organisational level to comply with both future Information Notices and the wider regulatory regime applicable to VSPs. 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 pay the consequences than

³⁸ [Penalty-Guidelines-September-2017.pdf \(ofcom.org.uk\)](#)

³⁹ See paragraph 1.3 of [Penalty-Guidelines-September-2017.pdf \(ofcom.org.uk\)](#)

⁴⁰ See paragraph 1.11 of [Penalty-Guidelines-September-2017.pdf \(ofcom.org.uk\)](#)

it is to comply with the law in the first instance, and that it should therefore encourage good practice and a culture of compliance across the organisation.⁴¹

- 5.5 As a general matter, we are of the view that the need for deterrence in any penalty set for a contravention of information requirements is important as Information Notices are fundamental to Ofcom's regulatory functions, including in the context of VSP regulation. We therefore believe it is important to ensure that Fenix, as the provider of OnlyFans, and other VSP providers understand the importance of providing accurate information to Ofcom and, where inaccurate information has been provided, to notify Ofcom as soon as possible.
- 5.6 We consider that imposing a financial penalty in this case would incentivise Fenix's management to take appropriate steps to ensure that it complies in future. It would also ensure that both Fenix and the wider sector understand how seriously Ofcom takes compliance with these duties.

Fenix's size and financial strength

- 5.7 The level of the penalty must be sufficient, having regard to the turnover of the regulated body, to have a material impact on the regulated body so that it is incentivised to bring itself into compliance and avoid recurrences of the contraventions in future. Regulated bodies with a large turnover, for example, may be subject to higher penalties in order for a deterrent effect to be achieved. We have imposed the penalty which is appropriate and proportionate taking into account all the circumstances of the case in the round, keeping in mind the central objective of deterrence.
- 5.8 To the best of our knowledge, Fenix has an experienced regulatory and legal team and should have been fully aware of its regulatory obligations and the consequences of contravention. As such, it should have taken steps to ensure the data relied upon was properly verified, cross-checked and reviewed through appropriate governance channels (including by appropriate senior management) prior to its submission. An appropriate penalty would be necessary to ensure robust governance measures are put in place to guarantee accurate information is provided in response to any future statutory information notices.
- 5.9 As part of this investigation, Ofcom sent a statutory information notice on 31 July 2024, asking Fenix to provide its '*applicable qualifying revenue*.' Within this Notice, Ofcom provided the relevant legal provisions and set out by way of guidance, what the terms '*qualifying revenue*' and '*applicable qualifying revenue*' may mean in practice.
- 5.10 In response to this Notice and based on Fenix's interpretation of the definition of '*applicable qualifying revenue*' provided in section 368Z4(3) of the Act, Fenix confirmed its applicable qualifying revenue is US\$ [X]. This is approximately £ [X] (as at 28 August 2024).
- 5.11 However, we also note that Fenix's global revenue for 2023 was US\$1,306,696,000.⁴² These figures have been taken into account when considering whether the penalty is appropriately high to deter Fenix from future contraventions.

⁴¹ See paragraph 1.5 of [Penalty-Guidelines-September-2017.pdf \(ofcom.org.uk\)](#)

⁴² [Fenix International Limited's annual report and consolidated Financial Statements for the year ended 30 November 2023.](#)

Seriousness, harm, and culpability

Seriousness

- 5.12 Our Penalty Guidelines describe seriousness as a specific example of a factor we may consider when determining penalty.⁴³ Ofcom's powers under section 368Z10 of the Act are crucial to Ofcom's ability to effectively regulate the VSP sector. A contravention of a requirement to provide information in the manner and form required under section 368Z10 is inherently a serious matter as it materially hinders Ofcom's ability to carry out its functions.
- 5.13 In addition to the inherent seriousness of contravening the Notices, there are specific factors in this case which contribute to the seriousness of Fenix's alleged breach.
- 5.14 First, Fenix's apparent failure to provide accurate data pursuant to the Notices suggests that it has not put in place robust governance processes to ensure that data provided in response to statutory powers is accurate and complete, or to ensure that those processes and systems include the necessary level of oversight needed to ensure the accuracy and completeness of its responses. Furthermore, the incorrect information provided regarding the challenge age was central to Ofcom understanding the age assurance measures on OnlyFans, which informed our understanding of Fenix's compliance with the regime.
- 5.15 We expect that all information provided in response to a statutory information request should be adequately reviewed, cross-checked and verified through appropriate governance channels. We expect responses to statutory information requests should only be sent to Ofcom when they are confirmed to be complete and accurate, and any issues with the accuracy of the data submitted should be notified to Ofcom at the earliest opportunity. This is particularly the case when dealing with large, well-resourced company such as Fenix.
- 5.16 Second, we also note that Fenix took 18 days to report its challenge age misconfiguration discovery from the point it was internally confirmed, which we consider represents an aggravating factor in terms of the penalty (see paragraphs 5.26 and 5.27 below).
- 5.17 We consider that this failure to put in place adequate and effective governance around Fenix's response to statutory information requests, to ensure that all information submitted to Ofcom was accurate and complete, as well as ensuring that processes were in place to ensure that Ofcom (and, indeed, its own regulatory and legal team) was made aware of the inaccurate information at the earliest opportunity, represents a serious regulatory failure. Ofcom's supervision team will be engaging with OnlyFans to review the current governance processes it has in place.

Harm

- 5.18 We also considered the degree of harm, whether actual or potential, caused by the contravention.⁴⁴
- 5.19 One of Ofcom's priorities is to increase transparency about the steps that VSPs are taking to protect their users since the inception of the VSP regime.⁴⁵ We have an important role to

⁴³ See section 1.12 - [Penalty-Guidelines-September-2017.pdf \(ofcom.org.uk\)](#)

⁴⁴ See section 1.12 - [Penalty-Guidelines-September-2017.pdf \(ofcom.org.uk\)](#)

⁴⁵ [Video-sharing platforms: Ofcom's plan and approach](#), October 2021.

play in promoting greater transparency from VSPs and ensuring information published by the regulator is meaningful for the general public, including users of VSPs, parents and carers, and Parliament. The protection of children from exposure to harmful material on adult platforms is a key priority for Ofcom,⁴⁶ meaning that transparency in this area is particularly important.

- 5.20 Fenix's submission of inaccurate information in response to the 2022 Notice resulted in Ofcom publishing incorrect information in our first VSP transparency report in October 2022.⁴⁷ The purpose of this report was to provide transparency to the industry and to the public while highlighting how VSP providers set, enforce, and test the measures they put in place to protect users. The inaccurate age threshold figure provided in response to that Notice undermined Ofcom's ability to carry out this crucial regulatory function and meant that the inaccurate information published in the Year 1 VSP report remained uncorrected. This has affected the credibility and reliability of the information we have shared publicly and has the potential to undermine our role as the UK regulator of online services, as well as causing additional work as we will be required to issue a note of correction to our report as a result of Fenix's failure. This is something that we take very seriously.

Culpability and remedy of breach

- 5.21 We do not have reason to believe that the breach occurred deliberately or recklessly; however, we do consider Fenix's conduct was careless and demonstrated that Fenix did not have adequate governance processes in place to ensure that the information it had provided was correct and accurate. Ofcom expects providers of VSPs, such as Fenix, to have in place robust quality assurance systems and appropriate governance processes, prior to responding to any statutory information notices.
- 5.22 This is an important contributing factor to the level of penalty that we consider to be appropriate, as it is fundamental to our central objective of ensuring the penalty is sufficiently high to incentivise Fenix to take its regulatory obligations seriously and ensure future compliance.
- 5.23 We acknowledge that Fenix has now provided Ofcom with accurate information regarding its challenge age for its age estimation measure. As such, we consider the issue to have been rectified.

The duration and wider impact of the contravention

- 5.24 The contravention lasted for 16 months which, as set out at paragraph 5.20 above, means that inaccurate information around OnlyFans' age assurance measures – critical measures to protecting children from restricted material under the VSP regime – was contained in our published reports for a significant length of time.
- 5.25 While this significant duration is a serious failing in itself, it also demonstrates that Fenix failed to proactively check its operational age assurance threshold in the 26-month period that it was erroneously set to 20. As noted in our Guidance on Harms and measures, platforms wishing to assure themselves that they are in compliance with their duties under

⁴⁶ [Video-sharing platforms: Ofcom's plan and approach](#), October 2021, page 16; see also [Regulating Video-Sharing Platforms](#), 25 January 2024.

⁴⁷ See report: [Ofcom's first year of video-sharing platform regulation](#), October 2022, section 13.

the VSP Regime should regularly collect information about the impact of their protection measures to manage risk and protect users.⁴⁸

Aggravating factors

Delay in reporting the contravention

- 5.26 We note that Fenix took 18 days to report its challenge age misconfiguration discovery from the point it was internally confirmed.
- 5.27 While we acknowledge the need for any internal checks to be conducted, seeking legal advice and taking any remedial steps, we do not consider the timeframe Fenix reported in to be reasonable and this has been considered an aggravating factor in consideration of the appropriate level of penalty. Ofcom expects stakeholders to inform us of any potential contraventions as soon as possible and within as short a period as is reasonable depending on the circumstances of the case.

Mitigating factors

History of Contraventions

- 5.28 We note that this is the first occasion on which we have found Fenix, as the provider of OnlyFans, in breach of its duties under section 368Z10, 368Y(3)(b) of the Act, or any other duty under the VSP regime more generally.

Self-reporting of potential contravention

- 5.29 As noted at paragraph 3.19 above, Fenix identified that the information provided in response to the 2022 and 2023 Notices was inaccurate and proactively informed Ofcom about the issue. While we are concerned that it took Fenix 18 days to notify us about the issue, we acknowledge the importance and value of self-reporting in compliance matters, and this has been taken into account in the consideration of the appropriate amount of penalty.
- 5.30 It is important that the wider industry take compliance with their regulatory responsibilities seriously and, when things go wrong, they recognise this and act quickly and responsibly to remedy any harm caused. Being open and transparent with the regulator is a critical part of effective regulation, and as such we strongly encourage regulated entities to self-report concerns or potential compliance failures. Notwithstanding the failings we have found in this case, we strongly encourage providers of VSPs to take note of Fenix's conduct in this respect.

Findings on the appropriate penalty

- 5.31 Under the Act, the amount of penalty imposed on a provider of a VSP for a contravention of its duties, including the duties set out in sections 368Y and 368Z10, is to be such an amount not exceeding 5% of the provider's applicable qualifying revenue or £250,000, whichever is the greater amount.⁴⁹

⁴⁸ [Video-sharing platform guidance](#), paragraphs 7.47 and 7.50 to 7.56.

⁴⁹ Section 368Z10(2) and (4) of the Act

5.32 As noted at paragraph 5.10 above, Fenix’s applicable qualifying revenue is US\$[£].⁵⁰

Conclusion

5.33 Taking all of the factors set out at paragraphs 5.2 to 5.30 above in the round, we believe that it is appropriate and proportionate to impose a penalty of £1,050,000. This is below 5% of Fenix’s applicable qualifying revenue.⁵¹ This includes a 30% discount applied to the penalty figure of £1,500,000 which we would have otherwise imposed, reflecting the resource savings achieved by Ofcom as a result of Fenix admitting liability and its completion of the settlement process.

5.34 We consider that the penalty figure is proportionate to the seriousness of the contravention.

Interpretation

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

Suzanne Cater
Director of Enforcement

11 April 2025

⁵⁰ Approximately £[£] in Pounds Sterling as at 28 August 2024.

⁵¹ Fenix confirmed its applicable qualifying revenue is US\$[£] on 28 August 2024. We have used the exchange rate from the Bank of England on 28 August 2024 to convert the figure to GBP.