

Title: Banning content rated stronger than R18 on video on demand (Communications Review) IA No: DCMS074 Lead department or agency: DCMS Other departments or agencies:	Impact Assessment (IA)
	Date: 23/01/2013
	Stage: Development/Options
	Source of intervention: Domestic
	Type of measure: Primary legislation
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Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£-1.01m	£-1.01m	£0.11m	Yes IN

What is the problem under consideration? Why is government intervention necessary?
 Material that is rated by the British Board of Film Classification (BBFC) as stronger than R18 (please see <http://www.bbfc.co.uk/what-classification/r18>) is currently banned in 'hard-copy' format such as film, video and DVD, by the Video Recordings Act 1984. However, no legislation mandates that UK Video on Demand (VOD) services, as co-regulated by the Authority for Television On-Demand (ATVOD), must ban material of this nature. This has created regulatory inconsistency, and risks this material being propagated due to technological advances not foreseen by Parliament in 1984.

What are the policy objectives and the intended effects?
 To bring VOD regulations on material stronger than R18 into line with the regulations for 'hard copy' material as set out in the Video Recordings Act.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 2: Do nothing - This would continue to allow access to material that is already considered harmful in an otherwise regulated environment but which is unregulated in this area. The potential costs of this inconsistency are likely to rise as VOD services become more prevalent.

Option 1 (Preferred): Ban all access to material stronger than R18 - This would bring regulations for VOD into line with those for hard copy material.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 04/2018

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: n/a	Non-traded: n/a	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: VOD R18 Regulation

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: +

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	£0.12m	£1.01m

Description and scale of key monetised costs by 'main affected groups'

The industry is difficult to measure but using figures provided by ATVOD, there are 19 adult providers with a revenue estimate of £98,000 p.a. generated from a combined subset of VOD and material stronger than R18. Enforcement costs of the measure are not expected to be more than £20,000 p.a.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

Adults and children are protected from harm caused by consuming material rated stronger than R18.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Material rated as stronger than R18 is harmful to adults and children.
Companies can at low cost identify and remove stronger than R18 material.
0.25% of revenue for adult providers comes from a combined subset of VOD and stronger than R18 material.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0.11m	Benefits: 0	Net: £0.11m	Yes	IN

Background:

The Video Recordings Act (VRA) 1984 allows the BBFC to rate video material. There are certain kinds of material that are considered too harmful to be given even the R18 (restricted) ranking and are therefore unclassified, which means the material is not available for purchase in 'hard copy'. These include, amongst others, material:

- breaching the Obscene Publications Act
- likely to encourage an interest in sexually abusive activity
- portrayal of any sexual activity which involves lack of consent

VOD, BBFC, ATVOD, Ofcom and CAC

- *Video-on-Demand (VOD)* are services that allows users to select and watch video content when selected (i.e. on demand). Television VOD systems either stream content through a media box or other device allowing viewing in real time or by permitting downloading of content to be viewed later.
- *The British Board of Film Classification (BBFC)* is an independent, self-financing and not-for-profit media content co-regulator. In the context of this impact assessment, it provides regulation relating to the rating classification and labelling (U, PG, R, R18 etc...) for the film, video and DVD industry.
- *The Authority for Television On-Demand (ATVOD)* is an independent co-regulator for the editorial content of UK video on demand services that fall within the statutory definition of On-Demand Programme Services.
- *The Office for Communications (Ofcom)* is an independent regulatory body with responsibility, among others, for ensuring competition and consumer interests in the UK broadcasting, telecommunications and wireless communications sectors.
- *Content Access Control (CAC)* are systems that 1) verifies the user is aged 18 and over and 2) each time the user returns a security control, like a password or PIN number, is used.

Problem under consideration:

VOD regulations do not currently restrict material stronger than R18, whereas such restrictions do exist for 'hard copy' versions. As such there is a potential difference in regulation of the same material depending on how it is distributed. This is likely to become more important as VOD becomes more prevalent.

The problem under consideration is a regulatory one, and hence this IA does not rehearse the reasons why Parliament originally chose to ban dissemination of this material in 1984. However, for the purposes of calculating costs and benefits, it is helpful to consider material stronger than R18 as a demerit good. Demerit goods have negative consumption effects either on the consumer or on others, and hence restriction of their consumption creates a net benefit to society, even where there may be consumer demand. Other examples of demerit goods include prostitution and hard drugs, which are similarly banned by legislation. Without intervention, access to stronger than R18 material will continue to be available by means of VOD. Intervention is, therefore, necessary to prevent consumption of this demerit good.

Policy objective:

This measure seeks to align the regulation of VOD with the regulations on material stronger than R18 under the Video Recordings Act, in which this material is banned.

Description of options considered (including do nothing):

➤ **Option 2: Do nothing**

This would continue to allow access to material that is already considered harmful in an otherwise regulated environment but in this case is an unregulated area. Controls on material stronger than R18 accessed via VOD will continue to be inconsistent with the ban on hard-copy versions of the same material. The potential costs of this inconsistency are likely to rise as VOD becomes more prevalent.

➤ **Option 1 (Preferred): Ban material stronger than R18**

Ban access to material stronger than R18 via the VOD distribution system. This would bring regulations for VOD into line with those for hard copy material and protect children and adults from the consumption of harmful material.

Monetised and non-monetised costs and benefits of each option (including administrative burden):

➤ **Option 2: Do nothing**

The existing legislation would remain the same. Therefore for the purposes of this impact assessment the 'do nothing' sets the baseline for the cost and benefit assessment. Without any change to the current regulatory framework economic circumstances remain the same. The overall net present value (NPV) is zero as there are no costs imposed on business, no additional enforcement costs and the current level of potential harm is unchanged.

➤ **Option 1 (Preferred): Ban material stronger than R18**

Economic considerations

The proposed ban on material stronger than R18 prevents producers from supplying particular material via a particular distribution channel to consumers. Equally, it constrains the ability of the consumer to accessing banned material. Overall, however, this is a benefit when it prevents people from consuming a demerit good.

The implementation of a ban would require businesses to comply with the new regulations, thereby incurring a transitory business cost.

Evidence on the size of the market for VOD material that is stronger than R18 is not available. However, a best estimate has been calculated from available evidence.

In estimating the amount of revenue generated from stronger than R18 material ATVOD states that it believes a significant minority of 'hardcore' services include some material which is stronger than R18. The turnover of all adult providers that have VOD services for 2011-12 is provided by ATVOD in the first two columns in the figure below. From these figures a best estimate of the industry is determined to be £39m.

Number of companies and turnover figures supplied by ATVOD of adult providers for 2011-12

# of Companies	Turnover	Interpolated Mean Turnover	Industry Turnover
6	Turnover less than £50 000	£25 000	£150 000
5	Turnover of £50 000 - £100 000	£75 000	£375 000
6	Turnover of £100 000 – £6.5m	£3 200 000	£19 200 000
2	Turnover of £6.5 m – £25.9m	£9 700 000	£19 400 000
19		Total	£39 125 000

Industry turnover is estimated from figures provided by ATVOD in the first two columns.

A major distributor such as Portland TV operates adult broadcast channels on Sky, Virgin Media and Freeview, in addition to running on demand services on Virgin Media and its own websites. Its annual turnover was £14m in 2011 with only 5% coming from VOD (cable & web). While there is no suggestion that Portland TV is providing access to material stronger than R18, for the purposes of this IA it is assumed that the business model employed by Portland TV reflects the revenue distribution for other companies. It is estimated that for all companies in the table above, 5% of turnover comes from VOD.

According to the BBFC's Annual Report 2011, during the last decade (2001-2011) the BBFC has labelled 11,322 Video/DVDs as R18 and rejected only 25 Video/DVDs. As such, 0.22% of video/DVDs fall outside of the BBFC's rating system. For VOD this percentage is likely to be higher because content publishers do not need to label material in the same way as they do with hard-copy video/DVDs.

Based on the available, albeit limited data, the percentage of overall revenue generated from material stronger than R18 on average by 19 adult providers identified by ATVOD is estimated to be close to 0.25%. This estimate is based on 5% of revenue for these companies being generated by VOD and 5% of this VOD revenue coming from material that is stronger than R18.

Best estimate: £39 125 000 * 0.0025 ~ £98 000 p.a.

This figure is likely to be a high estimate because the larger companies are more likely to focus on material that is not stronger than R18 due to economies of scale, which apply to such products. In addition, distribution of stronger than R18 material is moving online to providers located overseas. The market demand for this material to be distributed via VOD is arguably in decline.

The estimate is close to the BBFC based estimate of 0.22% of video/DVDs being rejected because the material falls outside the BBFC's rating system (U - R18).

Costs

- *Administrative burden* – In order to ensure VOD suppliers comply with the ban on material stronger than R18, a small recurring cost is required for enforcement. This is estimated by ATVOD to not exceed £20 000 p.a.
- *Transitory costs* – the implementation of a ban means businesses need to become compliant. ATVOD considers that only a minority of material is stronger than R18 and only a minority of business would have to remove a proportion of their material. It would therefore not be proportionate to monetise this cost.
- *Business constraint* – The ban effectively prevents businesses to supply material in demand. However, overall the demand for material stronger than R18 is estimated to be small. A best estimate of lost revenue for the industry due to the ban is £98 000. Between 19 companies this is £5 000.

Benefit

- *Preventing harm from consuming a demerit good* – Literature reviews confirm that consuming material stronger than R18 may result in harm. Not consuming a demerit good represents an overall benefit. However, in order to reliably estimate this effect would require surveys to estimate the effects on well-being and applying the results to a robust model of consumer behaviour.

Cost and Benefit Summary

	Option 2: Do Nothing		Option 1: Ban on Stronger than R18 Material	
	Item	NPV	Item	NPV over 10 years
Cost	Do nothing	£0m	Administrative burden	£0.19m
			Business constraint	£0.90m
			Transitory costs	Negligible
Benefit	Do nothing	£0m	Preventing harm from consumption of a demerit good	+

With Option 2, Do nothing, access continues to material that is considered harmful in law. As VOD services continue to become more popular, the potential access to material stronger than R18 increases. NPV designated as ‘+’ represents a benefit, though is not proportionate to monetise.

Assumptions:

- Net benefit of Option 2 is equal to zero, and as such other options are evaluated relative to Option 2.
- Since only a minority of companies have some material stronger than R18 it is estimated that from available revenue figures, 0.25% of revenue is generated from a combined subset of VOD and stronger than R18 material.
- It will be a straight forward process for companies to identify and remove material that is stronger than R18 in the transition process arising from the ban.

Rationale to justify level of analysis (proportionality):

Material rated stronger than R18 is banned in alternative distribution channels such as hard-copy video. As such, the measure entails expanding existing legislation to account for new technologies. In addition, to reliably estimate the potential harm would require undertake surveys to estimate the effects on well-being and applying the results to a robust model of consumer behaviour. Therefore attempting to monetise the harmful effects of material stronger than R18 would not be proportionate.

Overall, demand for material stronger than R18 and suppliers providing material stronger R18 are in minority and of little economic benefit to the UK economy. With a best estimate of £98 000 p.a., it would not be proportionate to analyse the business structure in detail, especially when it can be argued that such an analysis is likely conclude with smaller estimate.

Risks

- *Business moving overseas risk* - Recent attempts to restrict access to R18 material has seen businesses move outside of the UK’s jurisdiction and therefore out of the VOD regulations. This would reduce the benefit of banning a demerit as consumers still have access via alternative distribution channels. This is already evident by how according to ATVOD the revenue for UK adult providers is in overall decline due to the availability of free material on (non-UK) websites. Nevertheless there is a public value in ensuring that there is consistency for regulation across platforms so that UK based VOD firms are compliant with the UKs views on harmful material.

Direct costs and benefits to business calculation (OITO)

The measure is considered an IN with an equivalent net cost to business (EANCB) of £0.11m, calculated from a 10-year span. It is not expected that the measure will have any significant impact on the growth of VOD services.

A ban would prevent business from generating revenue from a market demand. The preferred option would prevent adult providers from offering stronger than R18 material and from generating £98 000 of revenue p.a. This figure is based on 5% of adult providers generating revenue from VOD and 5% of this VOD revenue coming from material stronger than R18.

Public confidence in VOD services may improve as consumers are assured that both the adults and their children do not have access to stronger than R18 material. This may result in a positive growth impact for VOD services overall. In addition, the industry for stronger than R18 and R18 material is in decline with content being offered online by providers located overseas.

Wider Impact:

Economic and financial

Due to the small size of the stronger than R18 material industry, the overall economic impact of a ban is limited. Enhanced public confidence due to the fact there is no risk to the adult consumer and their children from being exposed to stronger than R18 material may help the growth rate of VOD services.

Social

The ban will reduce the harmful effects of stronger R18 content.

Environmental

There are no major environmental impacts expected from the preferred option.

Summary, preferred option and description of implementation plan:

Material that is rated by the BBFC as being stronger than R18 (BBFC Classification Guidelines <http://www.bbfc.co.uk/what-classification/r18>) is currently considered harmful to all people and is therefore banned in 'hard-copy' format (film, video, DVDs etc...) by the Video Recordings Act 1984. Video on Demand (VOD) services based in the UK are regulated by the Authority for Television On-Demand (ATVOD). However, no legislation mandates that VOD services must protect adults and children from stronger than R18 material. This imbalance in regulation leaves children and adults potentially vulnerable to harm from stronger than R18 material.

The ban on material stronger than R18 material via VOD entails a legislative change, which we propose to make in Parliament. This will protect people of all ages from harm from VOD services by ensuring they do not have access to the kind of material that is already banned in other formats. ATVOD, as a co-regulator, would investigate breaches and enforce compliance.