

# DCMS Audiovisual Media Services Consultation

## A response from A+E Networks EMEA

A+E Networks® UK is a joint venture between Hearst and Sky. Its portfolio of quality factual and entertainment channels includes HISTORY®, Lifetime®, Crime + Investigation®, H2® and free-to-air channel BLAZE™.

A+E Networks UK launched in November 1995 and now operates 20 channels, broadcasting into 60 million homes across almost 100 countries in the UK, Scandinavia, Benelux, Central & Eastern Europe, Africa and the Middle East.

The venture has offices in London, Warsaw, and Johannesburg.

### Questions on implementation - Protection of Minors

1. Do you agree with our proposed approach to amend s368E of the Communications Act 2003 to align the protection of minor requirements for linear and on-demand?
  - a. Yes
  - b. No
  - c. If No, please give details.

**Yes, we recognize and support the importance of child protection across the digital environment. It is key however, that this alignment between linear and on-demand standards is implemented in an appropriate and proportionate manner. On-demand service providers should be allowed to ensure minors do not normally see harmful content by using methods they regard to be editorially, technically and commercially best suited to their services, devices, and viewers. As with the DCMS's proposed approach in the Online Harm White Paper, it is important that the steps a service provider is required to implement are proportional to any potential risk of harm.**

2. Noting that Recital 19 envisages that a system of that viewers should be provided with sufficient information regarding the nature of the content, should be equally applicable to both video-on-demand and linear services. Do you consider that Ofcom updating the relevant sections of the Broadcasting Code would be enough to sufficiently meet this requirement?
  - a. Yes
  - b. No
  - c. If no, please give details

**Yes, we support an update of Ofcom's Broadcasting Code to highlight the role of viewer information in helping parents and minors to make informed decisions about content. Presumably the Code will also need to be updated to reflect the proposed amendment of s386E of the Communications Act 2003.**

3. If no, what would be your preferred way of introducing a new requirement for ensuring that viewers have sufficient information about the nature of content on video-on-demand catalogues? Could you indicate from the following:
  - a. Using acoustic warning
  - b. Content descriptors
  - c. Visual symbols

- d. Age-ratings
- e. Other means (please specify)

**All of these methods are valid, depending on the nature of the service and the content available, and commonly deployed by on-demand providers at the present time. As per our answer to Question 1, we think it important that on-demand service providers should be allowed to ensure minors do not normally see harmful content by using methods they regard to be editorially, technically and commercially best suited to their services, devices, and viewers.**

- 4. Should the measures above use standardised system of content descriptors or age-ratings used for broadcast and/or video-on-demand?

**Having a direct relationship with their viewers puts on-demand providers in the best position to judge what are the most effective way of providing viewer information.**

- 5. What would the benefits/obstacles be for introducing a standardised system to such content?

**As per our answer to Question 4. a rigidly standardised system could prevent service providers from being able to communicate with their viewers in the most effective manner. It could also potentially overburden services that do not provide harmful content. In the linear sphere, with the notable exemption of the 21:00 watershed, the Ofcom Broadcasting Code currently affords broadcasters a great deal of discretion as to how they fulfill their obligations to protect minors, and viewers in general. In the event of a compliant, Ofcom assesses the end result, rather than prescribing exactly how it is arrived at.**

- 6. Should the government consider a self or co-regulatory model for provision of sufficient information to protect minors?

**If the Ofcom Broadcasting Code is amended to reflect this new alignment between on-demand and linear obligations regarding harmful content, and suitable guidance is published by Ofcom, we do not see the need to, or benefit of, creating or co-opting any other regulatory or advisory bodies, aside of course from the ASA's Committee on Advertising Practice, in relation to harmful adverts.**

**There are currently a number of forums in which service providers can share information on best practice, and on-demand service providers – especially those who are also linear broadcasters – have a wealth of experience applying compliance standards and communicating viewer care information.**

**Mindful of other regulatory initiatives on matters such as Online Harm, the ICO's Age Appropriate Design, and the existing GDPR, we are concerned that the arena of child and viewer protection for the digital sector is becoming crowded and potentially conflicted. We do not think that adding another level of regulatory administration, and possibly another player with a regulatory or advisory role and associated costs, is necessary or helpful.**

#### Questions on implementation - Advertising

- 7. The government invites views on how best to implement the requirement to ensure that VSPs comply with the relevant advertising provisions, noting that the Directive encourages the use of co-regulation by Member States to meet its aims, and that there already exists a co-regulatory framework for advertising on linear broadcast and VoD in the UK.

**We think the current CAP and BCAP codes are effective and well understood by broadcasters and on-demand providers, but are concerned that in the non-broadcast world it is largely the marketer and not the service or platform that is grasped by the codes of practice, and any consequent enforcement action. We would support a**

**move towards making the VSPs equally as liable for non-compliant and harmful advertisements, as broadcasters and on-demand service providers.**

8. The government's preferred approach is not to make legislative change with regard to the change of advertising minutes. Do you agree with this approach?

- a. Yes
- b. No
- c. If no, please explain why

**Yes.**

9. Do you consider that a review of the advertising minutes in the UK market should take place in relation to the liberalisation of scheduling of minutes set out in paragraphs 46-48?

- a. Yes
- b. No
- c. Please provide evidence that supports your view.

**No. Broadcast and on-demand advertising revenue is already under considerable pressure from social media. We would be concerned that any liberalization of the broadcast advertising rules further destabilize the audiovisual ad sales market and lead to a further migration of ad spend revenue from small commercial channels to the major national PSBs at the top of the EPG.**

Questions on implementation - Accessibility

10. The government's preferred approach is to consider the recommendations set out in Ofcom's report on accessibility for on-demand regarding the design and implementation of accessibility for on-demand; in the event that time-scales do not align with the implementation deadline of 19 September 2020 that copy-out is used to update the wording s368BC for video-on-demand of the Communications Act 2003. Do you agree with this approach?

- a. Yes
- b. No
- c. If no, please explain why

**Yes, if this means that on-demand service providers are effectively given a reprieve from the current DCMS proposals to impose 'full' access services obligations on on-demand providers with a four year implementation period.**

11. Do you agree with the government's preferred approach to ensure that the accessibility of emergency communications is made through existing provisions in Section 336 of the Communications Act?

- a. Yes
- b. No
- c. If no, please explain why

**Yes**

Questions on implementation - European Works

12. We propose that government amends the Communications Act 2003 to ensure that Ofcom produces a report every two years on the European Works quotas and prominence obligations, via copy-out. Do you agree?
- a. Yes
  - b. No
  - c. If no, please explain why

**Yes.**

13. We propose that government amends the Communications Act 2003 to ensure that Ofcom has to produce guidance on prominence of European Works in video-on-demand catalogues. Do you agree?
- a. Yes
  - b. No
  - c. If no, please explain why

**Yes. Following consultation with on-demand service providers.**

14. Are there core framework elements that should be included in this requirement to produce guidance?

**Any guidance should recognize the fundamental editorial and commercial freedom of service providers and allow them the flexibility to implement prominence of EU Works where it is appropriate and in a way best suited to the service, the service provider and its viewers.**

15. Noting that prominence in on-line catalogues could encompass a wide range of practices (e.g separate section, dedicated search, information on home page), please indicate which would consider would be appropriate:
- a. Separate section
  - b. Dedicated search
  - c. Information on home page
  - d. Other (please specify)

**Whichever practice is best suited to the service, the service provider, and its viewers.**

16. What would be your preferred way of introducing a new prominence requirement for European works content on video-on-demand catalogues?

**Whichever practice is best suited to the service, the service provider, and its viewers.**

17. Noting that the Commission is due to publish guidance in relation to low turnover and low audience, do you agree with the proposed approach that we allow for exemptions for quota and prominence obligations by amendment to section 368C(3) and 368Q (3) for the Welsh Authority of the Communications Act 2003
- a. Yes
  - b. No
  - c. If no, please explain why

**We strongly support the argument that low audience and low turnover calculations should be done at a channel and service level, and not be based on group revenues, which bear little relation to the financial viability of individual services. We are concerned that if the thresholds for exemptions are set too low for genuinely small channels and services to benefit from them, many international channels currently offered in smaller and newer EU states will become unviable, leading to a reduction in media plurality.**

**Our trade body COBA (the Commercial Broadcasters Association) has outlined in its response to this Consultation an approach to low audiences and low turnover calculation initially presented to the European Commission by the Association of Commercial Television in Europe (ACT). We support this approach.**

18. Do you consider that the current level of funding for European Works in the UK is sufficient? Please provide evidence.

**Yes**

19. The government currently has no plans to introduce a levy, however, do you think a levy scheme to fund European Works could be an effective way to provide funding? Please explain why.

**We are not aware of any persuasive evidence that EU content, especially EU content from the UK, is in fact underfunded.**

20. Are there alternative methods of funding European Works that you wish to provide views on?

**We think the current mixed ecology of the BBC licence fee, ad revenue, and subscriptions stimulates considerable investment in local content. However, we would encourage the government to broaden its approach to production tax relief to encourage investment in small production start-ups in the regions, and with diverse talent.**

#### Questions on implementation - Video Sharing Platforms

21. Do you agree with the proposed approach of implementing the provisions pertaining to VSPs in the 2018 Directive through the regulatory framework outlined in the Online Harms White Paper?
- a. Yes
  - b. No
  - c. Don't know

**Yes, broadly, in relation to harmful editorial content. In relation to harmful and non-compliant adverts, sponsorship and product placement, where the VSP will clearly be monetarizing and optimizing the delivery of ads, we believe the YSPs, as well as the marketers, should be held directly responsible by Ofcom or the ASA.**

22. If not, please explain why you deem this approach to be deficient and what alternative approach you would advocate.

**Please see our response to Question 21.**

23. Do you agree with the approach set out in paragraph 82 to appoint Ofcom as an interim regulator in the appoint Ofcom as the National Regulatory Authority as an interim measure if required?

- a. Yes
- b. No
- c. If no, please explain why

**Yes.**

24. Which VSPs, if any, do you expect would fall under the UK's jurisdiction under the Country of Origin principle? Please explain your answer.

**Given the criteria listed in Paragraph 79 of this Consultation, the UK regulator should be able to take direct action, or require a neighboring EU regulator to take action against most VSPs targeting UK residents.**

Questions on implementation - Signal Integrity

25. What would be your preferred way of introducing a new requirement for ensuring that appropriate and proportionate measures to ensure that audiovisual media services provided by media service providers are not, without the explicit consent of those providers, overlaid for commercial purposes or modified?

**n/a.**

Questions on implementation - Media Literacy

26. In addition to the measures described in the section on Media Literacy, are there any other legislative and non-legislative measures government should be taking to fulfill the obligations of promoting the development of media literacy skills set out in Article 33a(1)?

**n/a.**

Questions on implementation - Transparency of ownership of audiovisual media Service providers

27. Are you in favour of introducing additional measures which would require audiovisual media services providers under the UK jurisdiction to make information concerning their ownership structure, including the beneficial owners, accessible?

- a. Yes (please explain why)
- b. No

**n/a.**

Questions on business impact - Country of Origin

1. Will the additional references in jurisdiction criteria, relating to the location of staff making programme related decisions, or the reference to editorial decisions, relating to the day-to-day activity, affect you or your business?
  - a. Yes (please give details)
  - b. No
  - c. Don't know

**Specific issues of jurisdiction are only relevant in a UK context for as long as the UK remains part of the EU, or the beneficiary of a Brexit transition arrangement that includes audio-visual services. Our business has been impacted by the need to make our EU-facing channels compliant with the Audiovisual Media Services Directive and other EU legislation in a post-Brexit environment, rather than any particular amendment to Article 2.**

2. Will the amended derogation procedures affect you or your business?
- a. Yes (please give details)
  - b. No
  - c. Don't know

**This depends on whether member states have the scope to cast issues of consumer protection, currently covered by EU and member state regulations, such the advertising of alcohol, certain food types, and gambling, as risks to public health.**

Questions on business impact - Protection of Minors

3. Do you expect the new measure which restricts processing, collecting or otherwise generating personal data of minors for commercial purposes set out in Article 6a(2) to impact your audiovisual media service (or video sharing platform in the case of VSP providers)?
- a. Yes (please give details)
  - b. No
  - c. Don't know

**We would be concerned if this restriction was implemented in a blanket manner to prevent, for example, legitimate broadcasters and on-demand providers responsibly marketing to young viewers in cases where the correct permission had been obtained from a parent or responsible adult in line with the provisions of the GDPR.**

4. Noting the government preferred approach to update S368 of the Communications Act 2003 to align the , protection of minors requirements for video on demand with linear television, which would anticipate Ofcom to do a corresponding update to the Broadcasting Code. Do you expect the new measure on providing sufficient information to viewers about content which may impair the physical, mental or moral development of minors, by providing sufficient information to viewers about the nature of the content, as set out in Article 6a(3), to impact your audiovisual media service?

**Not if, as per our responses above, the amendment is implement in a proportionate and non-prescriptive way. There is however, a real danger that an overly prescriptive approach will lead to considerable additional operational and compliance costs, and an 'on-air' offering that the viewers finds less attractive and navigable. Also, as mentioned above, there are a number of other overlapping, and potentially contradictory, anti harm measures being introduced by the DCMS and the ICO, so any amendment to S368 of the Communications Act 2003, and the Ofcom Broadcasting Code, must be suitable drafted to allow broadcasters and on-demand providers to comply with all of these competing compliance demands.**

5. Would a standardised system of content descriptors or age-ratings used for broadcast and/or video-on-demand to provide sufficient information to viewers about content impact on your audiovisual media service?

**Yes it would add to operational and compliance costs, add an unnecessary additional level of administration, and potentially drive viewers away.**



Questions on business impact – Advertising

6. Would the further prohibitions on alcohol and e-cigarette advertising as referenced in paragraph 45 have an impact on your business?
- a. Yes (please give details)
  - b. No
  - c. Don't know

**No.**

Questions on business impact – Accessibility

7. Would reporting obligations, set out in Article 7(2) of the 2018 Directive, occur any administrative costs to your business? If so, can you quantify them [answers must be provided as total cost in pounds sterling]?

**No. We are currently required to provide this information to Ofcom.**

8. Would the development of accessibility action plans in respect of continuously and progressively making services more accessible to persons with disabilities, as set out in Article 7(3), occur any administrative costs to your business?

**We have already expressed our view to the DCMS, that its current plans to enforce access services requirements on on-demand services over a staged two and four year period are too onerous.**

9. Would the new requirement on the accessibility of emergency communication have any impact on your business?
- a. Yes (please give details)
  - b. No
  - c. Don't know

**Please see our response to Question 8, above.**

Questions on business impact - European Works

10. For on-demand providers, how much of your catalogue currently consists of European works (based on minutage)?

**We are an international broadcaster, whose channels editorial and commercial purpose is to broadcast top quality largely US factual programming. Although in some markets, most notably the UK and Poland we have started to build a body of locally commissioned programming in response to viewer demand.**

11. For on-demand providers, how much of your catalogue currently consists of European works (based on titles)?

**Please see our response to Question 10.**

12. Will meeting the new 30% requirement of European works in on-demand catalogues financially impact your business?
- a. Yes (please give details)
  - b. No
  - c. Don't know

**Yes, clearly. Having to source and/or commission additional EU produced content will cost additional money, but also potentially change the nature of our offering. This may in turn affect the desirability of our services to viewers.**

13. Will making European Works prominent in you catalogues financially impact on your business?
- a. Yes (please give details)
  - b. No
  - c. Don't know

**We currently commission and acquire EU content in response to known viewer demand. Consequently that content is already prominently displayed. Being made to prominently display or promote content that we had acquired primarily to meet an EU quota could negatively impact our business by detracting from the content that currently makes our services successful.**

14. Noting that the European Commission is required by Article 13 to publish guidance on the definition of low audience and low turnover. Do you anticipate that your on-demand service to be exempt from the obligations on the basis of a low audience or low turnover definition?
- a. Yes (please give details on why you think this should apply to your service)
  - b. No
  - c. Don't know

**Some of our channel brands, such as History and CI have pan-EU feeds, and associated on-demand service, which are separately languaged for each of the EU member state territories. Inevitably this means that in certain territories, in for example the Baltic or Balkans, by any common sense understanding of the terms, our services would be considered low audience and low turnover.**

**We strongly support the argument that low audience and low turnover calculations should be done at a channel and service level, and not be based on group revenues, which bear little relation to the financial viability of individual services. We are concerned that if the thresholds for exemptions are set too low for genuinely small channels and services to benefit from, many international channels and services currently offered in smaller EU states will become unviable leading to a reduction in media plurality.**

**Our trade body COBA (the Commercial Broadcasters Association) has outlined in its response to this Consultation an approach to low audiences and low turnover calculation presented initially presented to the European Commission by the Association of Commercial Television in Europe (ACT). We support this approach.**

15. Do you expect the new reporting obligations mentioned in paragraph 66 to generate any additional costs to your business?
- a. Yes (please give details)
  - b. No
  - c. Don't know

**We are currently required to provide this information to Ofcom.**

16. How much revenue do you currently generate from EU countries if transmitting in the EU? Please give your answer to the nearest £1000.

**We would be happy to provide this data to you separately, in confidence.**

17. Which European Union countries do you generate revenue from?

**We would be happy to provide this data to you separately, in confidence.**

Questions on business impact - Signal Integrity

18. Do you expect the new provision, set out in Article 7b, will generate any impact on your media service?
- a. Yes (please give details)
  - b. No
  - c. Don't know

n/a

Questions on business impact - Transparency of ownership of media Service providers

19. Do you expect such a requirement would generate any impact on your media service?
- a. Yes (please give details)
  - b. No
  - c. Don't know

n/a

Questions on cost to business - Economic Impact

20. What economic impact would new/amended provisions made by the 2018 Directive have on your business? How would the provisions lead to such impact?

**The potential economic impacts have been described above. In addition to the costs of implementing new operational, regulatory and on-screen activity, if the harmful content requirements are implemented too prescriptively, and the cost of acquiring additional EU content, we are concerned about the negative impact the changes may have to the attractiveness of our services to viewers.**

21. How would your business familiarise itself with the implications of these changes? Would you use in-house legal support, seek external legal advice or neither?

**Our in-house regulatory affairs, content, and operations team work very closely on change implementation.**

22. How much time (in hours) would it take for you/your staff/trade mark owners to familiarise yourself with the legal implications of the changes required by the Directive? How much would the use of staff time for this purpose cost your business?

**We would be happy to provide this data to you separately, in confidence.**

23. Are there any costs to you/your business beyond staff time? For example, preparation of guidance or amending existing licence agreements. Please outline what costs these are, and the financial cost to your business.

**We would be happy to provide this data to you separately, in confidence.**

...ends

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