



British Film

Institute

Response to

Department for Digital, Culture, Media and Sport

Audiovisual Media Services Directive

Consultation Document

August 2019

About the BFI

The BFI is the UK's lead organisation for film, television and the moving image which:

- Curates and presents a public programme of World Cinema for audiences - in cinemas, at festivals and online.
- Cares for the BFI National Archive - the most significant film and television archive in the world.
- Actively seeks out and supports the next generation of filmmakers.
- Works with Government and industry to make the UK the most creatively exciting and prosperous place to make film internationally.

Executive summary

The BFI welcomes the opportunity to respond to this consultation, in particular, we wish to stress the following points:

- The BFI endorses important revisions to AVMS, which will help to ensure that regulation is appropriate to the needs of industry and audience at a time of very significant change in the sector. In particular, the objective of **creating a level playing field between video sharing services, on-demand services and linear AV services is very welcome** and entirely justified, especially given rapidly changing consumer behaviour, new service providers and business models.

Global AV Market Revenue (% Share of GDP)								
	Cinema Theatrical	Online Video Advertising	Subscription OTT	Physical Video	Pay TV	Transactional Video	TV Advertising	Public TV
2013	0.050	0.020	0.010	0.040	0.310	0.010	0.280	0.080
2018	0.050	0.040	0.050	0.020	0.270	0.013	0.240	0.070
% Change	0	100	400	-50	-13	30	-14	-13

Source: Ampere Markets, Advertising Data from Group M.

- The BFI underlines **the crucial importance to industry and audiences of promoting the production and distribution of European works** through the 30% online quota and prominence guidelines. This includes UK works and is particularly important for independent works and helping them to connect them with audiences in the UK and in Europe. New provisions within revised AVMS are valuable tools to help achieve this.

European AV Content: % of UK and Total European Market					
	2014	2015	2016	2017	2018
UK Theatrical Box Office:					
European AV Content* % of Total Box Office	26.8	44.7	35.9	37.4	46.1
Total Europe Theatrical Admissions:					
European AV** Content % of Total	33.6	34.1	30.6	32.1	34.8

Note: * UK figures includes UK certified inward investment productions. **European figures includes own nation productions.

Source: BFI RSU Analysis / European Audiovisual Observatory

- The BFI welcomes the Government's proposal to **give Ofcom oversight of prominence measures**. We would emphasise the importance of a commitment to making European works of all kinds available to UK audiences as the UK prepares to leave the EU on 31 October 2019. This demonstrates that our commitment to supporting European works and to supporting European partnerships remains strong. We are aware, for example, of the importance that many members of the EU27 place on supporting European works and we support this through our work as a member of the European Film Agency Directors (EFADs).
- In an age when moving images are more widely available than ever, it is vital to ensure **effective protection of minors from harmful content on all platforms**. The BFI strongly welcomes the extension of existing measures to protect minors from

violent and pornographic images on video sharing platforms as well as on linear services. For example, as the custodian of the Government's Young Audiences Content Fund (YACF), such protection is particularly important to us. On a related note, the BFI has already made a submission to the Government's consultation on the Online Harms White Paper.

Children's Claimed Preference for AV Content Viewing		
	8-11 Year Old	12-15 Year Olds
% Prefer to Watch YouTube videos	49	49
% Prefer to watch programmes on TV set	37	38
% Like Both	14	16

Source: Ofcom Children and Parents Media Attitudes and Usage Report 2018

- The BFI welcomes the extension of a co-regulatory regime for advertising to video sharing platforms. We would want **any liberalisation of the rules on advertising, as permitted by the revised AVMS continues to be appropriate for minors** while ensuring that consistent sources of private and public revenue are available to support the creation and distribution of a wide and varied range of works.

Online Video Sharing - YouTube Advertising Revenue Dynamics + Forecast							
YouTube - Advertising Revenue (£ Million)	2013	2014	2015	2016	2017	2018	2019 (Forecast)
UK	111	124	179	234	270	281	301
World	2,063	2,233	2,971	3,990	4,872	5,337	5,945
% Growth vs 2013: UK						153	
% Growth vs 2013: World						159	

Source: IHS Markit

- Media literacy is a crucial competence** in helping people of all ages – including young people – to understand and interpret the wealth of moving images which surround them, especially in an age of disinformation and fake news. We welcome the Government's stress on promoting media literacy, especially in the Online Harms White Paper, including through a possible new taskforce.

Awareness of Fake News - 12-15 Year Old Children		
%	2017	2018
Heard of fake news	73	78
Understand what fake news is	67	74
Believed to have seen a fake news story online or on social media	39	43

Source: Ofcom Children and parents: media use and attitudes reports 2018.

- The BFI made **improving diversity and inclusion across the screen sectors** the core mission of its five-year strategy, *BFI2022*. It is embedded across every area of activity; from the development and production awards made through the Film Fund, to training programmes such as the BFI Film Academy, to our cultural programme and audience development work backed by the Audience Fund designed to improve

representation across the screen sectors. We strongly welcome the revised Directive's measures to ensure that linear providers, as well as video on-demand platforms, make their services continuously and progressively more accessible to persons with disabilities through proportionate measures. The UK is already strong in this field, but we can always do better. The BFI will look to build on existing measures. We also note that there are particular challenges of cost in relation to making large amounts of heritage material fully accessible in the near term.

Ofcom TV Access Services Report, H1 2018		
% AV Providers Making	H1 2018	2017
Any content accessible	50.6	54.7
Subtitles available	49	52
Audio-description available	11	13.3
Signed content available	8	8

Source: Ofcom TV Access Services Report 2018:

The BFI's response is informed by the expertise and input from many screen sector organisations and professionals. We have only addressed those issues on which we believe we have an important contribution to make.

Annexe A Questions on Implementation

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

The BFI has a specific interest in ensuring that minors are effectively protected. As the lead agency for film in the UK, we recognise that it is vital that minors are protected from harmful content as a matter of general public welfare.

The Government's Young Audiences Content Fund (YACF) (<https://www.bfi.org.uk/supporting-uk-film/production-development-funding/young-audiences-content-fund>), which is administered by the BFI, supports the creation of distinctive, high-quality content for audiences up to the age of 18. All content supported by the YACF will first need to be made available on free-to-access, Ofcom regulated services with significant UK-wide audience reach. It is clearly critical to ensure that this content, and other content on these platforms aimed at this age group, can be made available in an environment that does not expose minors to inappropriate or harmful content.

This will help to ensure that a wide range of culturally diverse material is available to young audiences in an environment that parents and carers can be confident is well-regulated and conforms to high standards of safety.

We note that the DCMS consultation mentions that in Scotland a person acquires full legal capacity at 16 rather than 18 as is the case across the rest of the UK. We would propose that the DCMS talk to the relevant department of the Scottish Government to determine how best to respect the specificity of Scottish law in this context.

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

The BFI regards updating the existing Broadcasting Code – which although we are not expert in such matters we understand is widely regarded as having been effective – as the most practical and efficient way of providing viewers with such information.

It is key that the public have continuing confidence in the system. Therefore, we would like to see regular and scheduled reviews (for example, every three years) of this mechanism and for the Government to consider alternative arrangements – such as co-regulation - if public confidence in the system starts to fall.

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: N/A.

- a. Using acoustic warning
 - b. Content descriptors
 - c. Visual symbols
 - d. Age-ratings
 - e. Other means (please specify)
4. Should the measures above use standardised system of content descriptors or age-ratings used for broadcast and/or video-on-demand? N/A.
 5. What would the benefits/obstacles be for introducing a standardised system to such content? N/A.
 6. Should the government consider a self or co-regulatory model for provision of sufficient information to protect minors?

As stated in the response to Q. 2 above, the BFI believes that the Government should regularly review the impact of updating the Broadcasting Code and whether it achieves the stated policy objective of broadening the protection of minors.

If public confidence is diminishing, the Government should consider the introduction of a co-regulatory model which would include the possibility of formal intervention. We are not aware of any evidence to suggest that a self-regulatory model, relying on the actions of market participants alone, would be appropriate in such circumstances.

The BFI is mindful that a minor who wants to find something that is potentially harmful will be able to find it by simply opening a web browser. Age ratings, age verification, viewer discretion warnings and other mechanisms of this kind, only go so far in providing protection. It is Internet Service Providers which can ultimately play a key role in ensuring that minors cannot access harmful material. This is where the provisions in the Online Harms Bill have a crucial role to play.

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.

The BFI supports the objective in the Directive to encourage the use of co-regulation. We think it would be sensible to extend the existing co-regulatory framework for advertising, which we understand works well, to VSPs.

It is vital that this content can be made available on VSPs, such as YouTube, are not considered the “Wild West” sectors of the internet and that advertising conforms to the same laws as those applying to linear and VoD services.

As noted in response to Q.1 above, the BFI runs the YACF which supports the creation of distinctive, high-quality content to be made available on free-to-access, Ofcom regulated services for audiences up to the age of 18. Again, this will help to ensure that a wide range of culturally diverse material is available to young audiences in an environment that parents and carers can be confident is well-regulated and conforms to high standards of safety.

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?

The BFI is not qualified to answer this question.

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?

The BFI is not qualified to answer this question.

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

The BFI broadly supports this approach since it builds on legislation already in public which commands public confidence.

The BFI is strongly committed to the accessibility of services and to diversity and inclusion more generally. We take a holistic and intersectional approach to diversity in which we consider how different protected characteristics overlap, rather than regarding them in isolation. In its role as lead body for film and the moving image in the UK, the BFI has done extensive work to establish the best possible strategy for improving diversity and inclusion across the screen sectors and continues to advocate for a proactive approach from the sector to deliver long-term change. In particular, we have put in place the BFI Diversity Standards (<https://www.bfi.org.uk/supporting-uk-film/diversity-inclusion/bfi-diversity-standards>) to encourage equality of opportunity and address under-representation in the screen industries and meeting these standards is a condition of all our funding.

The standards have also been adopted by a number of other key stakeholders including by Film4, BBC Films, BAFTA, the BIFAs (British Independent Film Awards) and Paramount UK.

The collection of data by Ofcom on the extent to which services meet their diversity obligations is crucial and we would expect to build on and strengthen the data on accessibility which it already collects.

It must be acknowledged that there are significant challenges around the costs of subtitling, audio description and signing regarding what are huge volumes of heritage material.

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?

The BFI is not qualified to answer this question.

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 – we agree that using copy out from the Directive will be the most effective and efficient way of meeting these obligations. These new obligations are very important for enhancing audience access to a wide range of culturally diverse works in a digital era. The prominence obligation is as important as the quota. This is because audiences need to be aware that such works are available and where to find them, and prominence will help to achieve this. A report should be produced by Ofcom at least once every two years.
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 – this is an important obligation. As is Ofcom standard practice, we would expect them to consult on this guidance with industry, cultural and consumer organisations. The BFI is ready to work with Ofcom to help in drawing up this guidance based on our significant expertise in curating and presenting culturally diverse works such that they are highly accessible to a broad range of audiences.
14. Are there core framework elements that should be included in this requirement to produce guidance?
- In particular, it is essential that Ofcom works in close consultation with industry, trade bodies and cultural organisations – including the BFI - in producing this guidance.
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)

The BFI considers that ensuring prominence for European works on VoD services is a crucial but challenging task. The guides that audiences see on their VoD services are now often “dynamic” and personal in nature – that is they are updated in response to what a person has been watching, signposting works of interest based on material previously viewed. There is no straightforward way to ensure that “European works” are prominent in such a constantly changing environment.

In such a context, it will be important to consider how other forms of marketing – such as via email or search engines – could help ensure prominence for European works.

A technology platform, deployed by Ofcom, might help to improve the

understanding of what people are watching and how European works could be made prominent in such a context.

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

As noted in response to questions 12 and 13 above, the BFI feels prominence is increasingly important and that consultation and co-design with stakeholders, including those running VoD services with a high volume of European Works (for example through workshops) is essential. The BFI as a cultural organisation with curatorial expertise and acumen has a crucial role to play in the formulation of these new prominence requirements. It would also be valuable to consider how other EU Member States intend to do this and to draw on any examples of best practice from that analysis.

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

The BFI thinks that such exemptions, which are required by the revised Directive, should be implemented in the way that the Government and Ofcom think most appropriate.

18. Do you consider that the current level of funding for European Works in the UK is sufficient? Please provide evidence. See answer after Q.20
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. See answer after Q.20
20. Are there alternative methods of funding European Works that you wish to provide views on?

Funding for a wide range of European works – which under the AVMS definition includes works originating in the UK – is crucial to maintaining and strengthening cultural diversity for audiences. Market forces alone will not deliver such cultural diversity which is why, for example, the UK has in place such measures as tax reliefs, Lottery funding, Grant in Aid and public service broadcasting. We are aware that in other EU Member States, for example in France and Germany, levy systems perform a similar function.

The BFI believes that this mix of public and private support for European works is effective and delivers value to audiences as well as to the industry. The BFI is working very closely with the Government to ensure that the next Comprehensive Spending Review (CSR) optimises the support for European works, both new works and those representing our heritage.

Lottery funding also plays a very important in supporting European works, in 2008/09 £18.9 million Lottery investment was available for Production and Development in the UK including from the BFI Film Fund. In 2017/18 this figure was £33.7 million.

In the UK, the BFI with the British Council, leads the partnership overseeing Creative Europe.

From 2014 – 2018 the UK has benefited from €55.5 million of Creative Europe MEDIA funding. €35.1 million has supported 150 UK companies and 42 UK cinemas in the Europa Cinemas network, €30.4 million in investment has supported the distribution of 190 British films in other European countries.

The Impact of Creative Europe in the UK report highlighted that Creative Europe's many benefits far exceed the monetary grants. The funding has been crucial in supporting UK's audiovisual industries to grow, build international networks, generate jobs and skills, grow audiences and markets, experiment, up-skill, and meet meaningful social objectives locally and internationally.

Should the UK lose access to Creative Europe as a result of a no-deal Brexit, the BFI and screen sector stakeholders need to see compensatory arrangements introduced by the Government to mitigate the adverse impacts on both the sector and the audiences.

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 Such consistency of policy seems a sensible way of proceeding.

As stated, in response to questions 1 and 7 of this consultation, the BFI has a specific interest in ensuring that content supported by the YACF is made available in a safe and secure environment, to ensure that the widest possible range of content is available to young audiences.

However, the answer to the issues surrounding harm on VSPs does not lie solely in regulation. The BFI has submitted a response to the consultation from the DCMS on Online Harms in which it notes that 16-34 year olds now spend as much time watching video on SVoDs and YouTube as they do on linear services. In that submission we make clear that we believe the Government's development of a strategy for digital literacy will help people, including young people, equip and protect themselves from online harms, alongside the development of a robust regulatory framework.

It is essential that people develop the skills to navigate digital content safely and responsibly if they are to enjoy and benefit from film and the moving image to the greatest possible extent. The BFI is therefore very supportive of the Government's intention to develop an online digital literacy strategy (see detailed answer to Q.26). The BFI stands ready to draw on its considerable experience in film education and creative sector policy issues to help develop an effective digital literacy strategy that addresses issues regarding the proliferation of creative content online.

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

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?

The BFI is not best placed to answer this question.

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.

The BFI is not best placed to answer this question.

Please refer to the Online Harms White Paper Consultation for other questions related to the implementation of 2018 Directive, including:

- the scope of the proposed regulatory framework and measures;
- the appointment of an independent regulator; and
- the funding and enforcement powers of said regulator.

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?

The BFI is not qualified to answer this question.

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)?

Media literacy is a crucial competence and tool in helping people of all ages – including young people – to understand and interpret the wealth of moving images which surround them, especially in an age of disinformation and fake news. We think that the duty to promote media literacy in the context of AVMS should be complementary to the proposed approach set out in the Online Harms White Paper.

“Media literacy” is still not wholly and universally understood, meaning different things to different people. The internet has created a universal language coupled with unrestricted access and this has not been addressed well enough. For example, mental health issues in young people can be directly associated with online bullying and an inability to select and mediate as well as switch off when necessary.

Truly understanding the power and influence of largely unregulated VoD, streaming and social media platforms is critical in being able to deliver an effective ‘antidote’. We must anticipate and address in advance these challenges rather than addressing them after the fact.

Ofcom has an important role to play in addressing such issues but their focus has been principally on digital literacy and getting ageing and remote populations online, rather than addressing broader issues.

We also note that the Cairncross Review: A sustainable future of journalism, commissioned by the former Prime Minister, recommended that “the government should develop a media literacy strategy, working with Ofcom (which has a statutory duty to promote media literacy), the online platforms, news publishers and broadcasters, voluntary organisations and academics, to identify gaps in provision and opportunities for more collaborative working.”¹

Film education also has a considerable role to play in developing media literacy skills. It provides people with the critical skills needed to interpret video content, including by teaching them about intention, voice, tone, perspective, bias, provenance and editing techniques. These skills are crucial if people are to counter online disinformation - particularly ‘deep fakes’, which alter video content in order to represent events that did not occur – and to prevent ‘catfishing’.

Given the central role that media literacy plays in cultivating UK audiences for film and the moving image, the BFI stands ready to draw on its considerable experience in film education and creative sector policy issues to help develop an effective media literacy strategy that addresses issues regarding the proliferation of creative content online.

The BFI distributes National Lottery Funding *inter alia* in order to provide children with the opportunity to learn about film through Into Film - a charity which runs a network of more than 10,000 film clubs across the UK and provides teachers with the resources needed to integrate film into all areas of teaching, including both in the classroom and at special screenings held as part of the UK-wide ‘Into Film Festival’. Into Film has tailored specific materials to address online safety (<https://www.intofilm.org/online-safety>).

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?

The BFI is not qualified to answer this question.

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779882/021919_DCMS_Cairncross_Review_.pdf p.10