

Department of Culture Media and Sport: Audiovisual Media Services Consultation

Consultation response from the

Centre for Competition Policy

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This consultation response has been drafted by a named academic member of the Centre, who retains responsibility for its content.

As an academic research centre, we welcome explicit citation and sharing of this consultation response and the research cited within it. If you would like to discuss the evidence in more detail, please feel free to contact the centre or the named academics.

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Response

I welcome the opportunity to respond to the plans proposed by Her Majesty's Government for the implementation of the Audiovisual Media Service Directive (AVMSD). I respond here to most of the questions posed in the consultation document and have marked not applicable any I felt were too far outside of my area of expertise or had been made not applicable by a response to a previous question. As this is submitted electronically, I have included hyperlinks to additional resources and evidence.

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?

Yes

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?

This should not require significant changes as the Code already covers BBC On Demand Programme Service (ODPS). The wording should primarily extend the provisions related to ODPS to all on-demand services. The updating of the code in this direction may require further elaboration as to what 'likely to be accessed' means (currently done at paragraph 1.7 in the code) as the aim should be to provide an equivalent to the scheduling and identification obligations for linear broadcasters.

3. N/A

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

Yes.

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

The benefits of standardisation in this area are many. Standardised age rating and content descriptors are important as people can encounter the same content across a variety of platforms and need to be able to immediately identify its characteristics and appropriateness for themselves or their children. A standardised system is also easier for people with disabilities or with lesser knowledge of English to recognise. A standardised system should also be less burdensome on industry as the classification of content can be done once and then shared.

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

With the understanding that Ofcom serves as a regulator enforcing the updated provisions of the Code, the standardisation and application of age ratings and content descriptors can be done by industry players, possibly with facilitation by Ofcom. This would by definition be a co-regulatory system as

standards would be set and implemented by industry, yet Ofcom would still handle complaints in relation to the protection of minors through identification and scheduling/access as per the Code.

- 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 UK should rely as much as possible on existing co-regulatory frameworks. Relevant codes and guidance have already been developed and institutions are in place. Using existing frameworks is not just about limiting the expense of implementation, but it is also a good way to achieve levelness by ensuring that all players dealing with advertising content are being dealt with by the same rules and institutions. There is a greater likelihood that the same institutional values and approaches will be applied across players that are operating in the same market for advertising. It also makes sense because some companies are operating across platforms and types of services and should not have to deal with different systems.

- 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?**

Yes. No legislative changes should be made at this point or without a thorough review process being conducted.

- 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 review process is necessary. It is important to note that despite the intentions, the AVMSD does not level the playing field in relation to advertising because the real imbalances stem from differences in the ability to capture and make use of data and the ability to nurture relationships at a transnational level (For evidence and further explanation see [Broughton Micova and Jacques, JML 2019](#) and [our CERRE Report on the Playing Field for Audiovisual Advertising](#)). These imbalances are not likely to be significantly addressed by changing the quantitative limits on linear broadcasters, but a review is necessary to evaluate whether revising the limits would give some benefits to the broadcasters, particularly since the current rules go beyond the minimum given in the AVMSD.

10. N/A

11. N/A

- 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?**

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?

Yes and Ofcom should do this in consultation with industry and other stakeholders as it usually does for such things.

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

The language put into statute should be minimal and limited to the basic obligation to produce guidance, perhaps with an additional one for periodic review, so as to all Ofcom the necessary flexibility to work with industry and other stakeholders.

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)

A variety of tools and practices could be appropriate, and these may differ across platforms and interfaces. Instead of dictating specific tools, Ofcom's guidance could focus on principles such as presence in initial element of the interface, appropriate tagging and categorizing, prioritising European works in search results, etc. It is important also that guidance does not create imbalances in the burden of compliance across different types of catalogue services, and that it be something that can apply to services not yet developed.

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

I recommend a generic obligation in law mirroring the language in the AVMSD followed by principle-based guidance from Ofcom.

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

Yes.

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

Though it is not as bad as in many other European countries, funding for original content is not sufficient. Ofcom's latest Public Service Broadcasting Annual Report showed an 18% decline in investment in original content by the broadcasters between 2006 and 2016. (See the [2017 PSB Annual Report](#), page

24). It also showed the BBC is by far the greatest contributor to investment in original content and the BBC is due to take a significant hit to its budget by 2021. Despite its decision not to waive the license fee to all over 75s, the BBC is still expected to have approximately £250million per year less because of the Government's decision to transfer the burden of covering those claiming pension credit to the BBC (See [BBC's announcement](#) 10 June 2019).

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.

The Government should not rule out the option of introducing a levy, but should investigate whether it would be worth rolling out by conducting a thorough assessment. Such a levy could be used not only to fund the production of European works in the form of UK original audiovisual content, but could also support local and investigative journalism and other public interest content. An assessment should include modelling the potential gain by various combinations of levy format and scope of services captured. Such a levy should apply only to VoD services and not be applied to UK audiovisual media services.

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

It could be that the costs of implanting a levy outweigh the potential benefits, so the Government should consider alternative measures. These could include additional measures to encourage co-production between VoD services and UK broadcasters or independent producers, facilitating more collaboration among UK broadcasters, and investigating the advertising market.

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?

I do not entirely agree with the approach, as explained further in the following question.

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

I do not entirely agree with the approach outlined in the Online harms white paper. I find particularly problematic the conflation of illegal and legal harms, the lack of a threshold of users or reach, the limitation of 'super complaints' to 'designated bodies' and their dependence on 'evidenced circumstances', and the potential that very extreme penalties be able to be used in relation to failures in the moderation of legal content. (For further elaboration please see [our response to the Online Harms White Paper](#))

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

Yes Ofcom is the appropriate regulator.

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.

State bodies that have access to the company data required to determine this should do so following the guidance on scope and definitions expected from the European Commission.

25. N/A

26. N/A

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?

Yes. The government, or the regulator, should introduce additional measures to ensure that audiovisual media service providers provide information concerning their ownership structures, and the same rules should apply to VoD services and VSPs. It is an important transparency measure that is needed enable a media literate public to make critical judgements about the sources of their information and entertainment. Such information identifies those in whose interests the firms operate, and therefore who could be held accountable for editorial policy and algorithmic decision-making. Such information is also important for media plurality reviews to be able to identify potentially dangerous concentrations.