



## DCMS: Audiovisual Media Services Consultation.

### About us

1. Directors UK is the professional association of UK screen directors. It is a membership organisation representing the creative, economic and contractual interests of over 7,000 members — the majority of working TV and film directors in the UK.
2. Directors UK collects and distributes royalty payments and provides a range of services to members including campaigning, commercial negotiations, legal advice, events, training and career development. Directors UK works closely with fellow organisations around the world to represent directors' rights and concerns, promotes excellence in the craft of direction and champions change to the current landscape to create an equal opportunity industry for all.
3. We welcome the opportunity to comment on the DCMS Audiovisual Media Services Consultation.

### Annex 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 ✓
  - b. No
  - c. If No, please give details.
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

It would be useful to have a standardised system of content descriptors to help viewers to recognise the nature of content across all platforms of delivery.

**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)

Any, or a combination of the highlighted above would work, as long as they are clearly accessible and identifiable/understandable to viewers.

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

It may be useful to have a standardised system of content descriptors to help viewers to recognise the nature of content across all platforms of delivery.

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

Not qualified to answer.

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

The protection of minors is an important issue. We would advise using co-regulation, as encouraged by the directive. It would be a concern to leave such a significant matter entirely to self-regulation.

<b>Questions on implementation - Advertising</b>
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**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.**

Not qualified to answer.

**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

**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

Not qualified to answer.

<b>Questions on implementation - Accessibility</b>
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**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

**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

<b>Questions on implementation - European Works</b>
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**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

**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

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

Not qualified to answer.

**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)

It is likely that elements of all of these may be required dependent on different services and devices. As the on-demand market is likely to continue to evolve, any new regulations regarding prominence would need to be based on guiding principles and not locked into a particular technology as it will need to have the flexibility to adapt.

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

We would reference the recommendations made by Ofcom to the UK Government in response to the recent review of Prominence for Public Service Broadcasting (PSB)<sup>1</sup>, which aims to set out a new framework to keep UK PSB prominent in an online world.

A need for new domestic legislation in the UK has been highlighted to ensure PSB content remains easy to find as viewers increasingly watch TV online, this same principle could be extended and applied in order to ensure European Works received the same level of prominence. The core recommendations as outlined in the report<sup>2</sup> are:

- New legislation is needed to keep PSB prominent and support the sustainability of the public service broadcasters (PSBs). A new framework of legislation and regulation would ensure that viewers can continue to find and access the PSBs' linear and on-demand services, across a range of connected devices (smart TVs, set-top boxes and streaming sticks).
- These new rules should specify what PSB content is given prominence, and on what platforms. The framework should be flexible, so the new rules can quickly be adapted to changes in technology and viewer behaviour.
- The initial focus should be on connected TVs – which means smart TVs, and those connected by a set-top box or streaming stick. These are currently the main ways that viewers select and watch TV online and on-demand. Other TV platforms and services may be subject to the prominence rules in the future, as technology and viewing habits change.

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<sup>1</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0021/154461/recommendations-for-new-legislative-framework-for-psb-prominence.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0021/154461/recommendations-for-new-legislative-framework-for-psb-prominence.pdf)

<sup>2</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0021/154461/recommendations-for-new-legislative-framework-for-psb-prominence.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0021/154461/recommendations-for-new-legislative-framework-for-psb-prominence.pdf), page 1

- Viewers should be able to find PSB content easily on the homepage of connected TVs. This would include both the PSBs’ traditional channels and their on-demand services (e.g. ‘players’). One practical approach could be to have a single PSB portal or ‘tile’ through which all of the PSBs’ players are made available.
- On-demand services should only be given prominence if the service is clearly delivering PSB content. This should be based on the service meeting new requirements for a suitable range and amount of high-quality content made for UK viewers, as well as content in particular genres such as children’s, current affairs and factual.
- PSB content should also be given protected prominence within TV platforms’ recommendations and search results. Viewers are increasingly able to use TV platforms’ recommendations and search functions to find content, so new rules would ensure that they can still find a range of high-quality, UK content when selecting individual programmes directly.
- The new framework should protect the prominence of PSB content that is made available without charge. As PSBs develop new and different routes to make content available to viewers (e.g. BritBox), it may be appropriate going forward for the framework to apply to a broader range of the PSBs’ services.
- There may need to be new obligations to ensure the continued availability of PSB on-demand content to viewers – equivalent to the existing “must offer” and “must carry” rules for PSBs’ traditional channels.

Source: Ofcom: Recommendations for new legislative framework for PSB prominence, July 2019

As highlighted in Ofcom’s report, greater prominence is needed for PSB programming in an on-demand world to ensure that UK PSB content is accessible to all. Currently a wide variety of UK PSB content is presented to you when watching on linear television, regardless of your preferences or opinions. The risk with on-demand services is that you are presented with the most popular choices based on what you have previously watched, narrowing the choice of programmes and the way people look for them. The algorithms that drive greater personalisation of services for consumers will at the same time lead to a reduction of choice and diversity. Discoverability mechanisms are complex and will need careful consideration in order to support access to UK and European Works. We therefore welcome Ofcom’s intent to introduce new rules which will ensure viewers can still find a range of high quality, UK content when selecting individual programmes directly. The AVMS Directive allows for a similar provision for European Works and many of the same principles outlined above could apply.

Our view is that ensuring prominence for UK PSB/European Works is fundamental. We therefore welcome measures to encourage and improve this. As the on-demand market is likely to continue to evolve, regulation will need to have the flexibility to adapt with it whilst enforcing the basic provision. Such regulation/guidance will need continued attention to keep it relevant and to be future proofed.

**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

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

Recent figures published in Ofcom's Media Nations Report 2019<sup>3</sup> found that the combined spend by the main five PSB channels and BBC portfolio channels on first-run UK originated content totalled £2.586bn in 2018. The figures show that there has been an overall decline in content investment by UK PSBs from a peak in spend in 2004 (£3.502bn) to a low in 2017 (£2.508bn). With 2018 having the second-lowest recorded PSB network spend on first-run UK originations.

The report noted that PSB spend is coming under pressure due to falling advertising revenues for the commercial PSBs and a 3.6% (£140m) fall in the BBC's licence fee revenues (partly due to the Government's phased reduction of funding for free TV licences for the over-75s). At the same time, the reduction in spend by the PSBs has been compensated for by deficit funding from third party investments who are retaining the rights and making the money by selling the programmes elsewhere; or from co-productions with global companies. As a result the PSBs have been able to maintain access to high quality and a wide range of UK productions.

According to Pact<sup>4</sup> the SVODs commissioned a minimum of £150 million of British content from the UK independent production sector in 2017, which they expect to have risen for 2018. UK PSBs accounted for over 80% of the total UK commissioning spend in the previous 6 years. Comparatively the Ofcom Media Nations 2019 report estimates suggest that in 2018, Netflix and Amazon Prime spent a combined £12.7bn on content globally.

There is no doubt that the rise of on-demand providers has created a boom in content production, with tax break incentives for qualifying productions and the UK's reputation for production quality resulting in a growth in inward investment from international companies making content in the UK. This is good for the creative economy and employment opportunities in the UK creative sector. These platforms are investing huge amounts in producing very high-end productions. In order to get a good return on their investment they have to be appealing to the largest possible global audience. The need to have global appeal potentially risks a narrowing in the variety of content away from original UK stories from across the Nations and regions. According to the recent Ofcom Media Nations report (2019)<sup>5</sup> the PSBs delivered over 32,000 hours of UK-made original content across their channels in 2018. In comparison, "only 221 hours of the SVoD original productions available in 2018 were made in the UK."

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<sup>3</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/160714/media-nations-2019-uk-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/160714/media-nations-2019-uk-report.pdf) (page 5, page 49)

<sup>4</sup> Pact—written submission to the House of Lords Communications Committee Inquiry on 'Public service broadcasting in the age of video-on-demand' (April 2019)

<sup>5</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/160714/media-nations-2019-uk-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/160714/media-nations-2019-uk-report.pdf) (page4)

In March 2019, there were 736 UK-produced distinct titles available on Netflix UK, with UK content accounting for 11% of Netflix's overall library. Only 15 per cent of content on the UK version of Netflix is European.

We therefore welcome the European AVMS directive and its requirement for a minimum 30% of content catalogue to be European Works as a way of supporting and encouraging investment in local content and ensuring that the welcome investment from international SVODs does not result in a narrowing of the range of productions that appeal to UK domestic audiences. As with any quota, there is a risk that setting a minimum of 30% may mean some media services simply deliver the minimum of 30% of UK/European content, thus capping any further investment which may exceed this amount. We would recommend that the quota be regularly reviewed as it will need constant attention to remain relevant and additional incentives/obligations may be necessary to encourage ongoing commitment to making and showing UK/European programmes. In addition, as the market evolves and new platforms continue to emerge, it is becoming evident that content owners are increasingly planning to withdraw their content in order to preserve it for use on their own direct to consumer services. This will have an increasing impact on the availability of acquired content for platforms such as Netflix and Amazon. For example, if BritBox launches and the UK PSBs withhold their content in order to use it on this platform, it is likely to have a knock on impact on the global SVODs ability to meet the European Works content quota. It will also have an impact on the future of the secondary rights market for content.

In terms of the domestic PSBs ability to fund UK/European content, as highlighted earlier increased competition is having an impact on the commercial PSBs advertising revenue and channels such as ITV and Channel 4 are responding by exploring ways of adapting their advertising models for on-demand markets. The BBC doesn't have the same option to explore advertising models as it is funded by the licence fee. We believe that in order to strengthen and support the BBC as the main national Public Service Broadcaster the government needs to enable the BBC to access the proper financial support from the licence fee, unhindered by additional burdens such as the Over-75s concession, or any further concessionary or contestable funding grabs. Thereby enabling them to channel their finite funding for content into delivering on its duties to the licence payer and audiences. If we continue to remove budget and add regulatory hurdles to the BBC it will struggle to survive.

**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.**

As outlined the industry is undergoing such an unprecedented period of transition with the ever growing and evolving on-demand market disrupting traditional models of content funding, production and transmission. We think that it is too early to judge whether the AVMS 30% quota will be sufficient on its own to incentivise SVOD operators to invest sufficiently in UK original content.

We regret that successive UK governments have decided not to implement a number of levy schemes for the audiovisual sector that operate widely throughout the rest of Europe (such as cable and satellite re-transmission and private copying). In our view this reluctance – especially in relation to private copying – has exacerbated the problems associated with private copying, rendering everyday actions potentially illegal but without any compensation to the owners of the intellectual property. Despite government reluctance, in the longer term it may be worth keeping an open mind on the use of levies as a way of

encouraging funding for UK PSB/European Works should the levels of investment in UK works fail to maintain current levels. This could be in the form of a Levy on the media service providers or on the streaming hardware. However, introducing such a scheme would require careful consideration as there is a risk of introducing incentives that could have unintended consequences for the UK production sector and audiences. If the government were to change its stance on levies we would also expect it to review its position on other existing and proven levy schemes and to consider this issue in the round.

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

We note the recent news that Spain is exploring the option of introducing a new media tax for streaming television operators (OTT) such as Netflix, HBO, Sky, Filmin, DAZN or Amazon Prime Video in order to match their tax responsibilities with the traditional broadcasters and pay-TV operators, using these funds to re-invest in European cinema and RVE, the Spanish public service broadcaster.<sup>6</sup>

<b>Questions on implementation - Video Sharing Platforms</b>
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**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

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

Not qualified to answer.

**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

**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.**

**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;

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<sup>6</sup> <https://www.broadbandtvnews.com/2019/06/27/spain-looking-to-tax-international-ott-players/>



- the appointment of an independent regulator; and
- the funding and enforcement powers of said regulator.

Not qualified to answer.

#### 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?

Not qualified to answer.

#### 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)?

Not qualified to answer.

#### 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

It is important that there is an appropriate level of transparency in the ownership structure of media service providers in order to protect audiences. We do not have a position on whether additional measures are required.

#### **Annex B - Questions on Business Impact**

Directors UK has not responded to the questions addressing Business Impact as they are not applicable to us.

Directors UK  
www.directors.uk.com  
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