

# **Audiovisual Media Services - DCMS Consultation, May 2019**

## **Response from Discovery**

### **Introduction: About Discovery**

Discovery, Inc. (Nasdaq: DISCA, DISCB, DISCK) is a global leader in real life entertainment, serving a passionate audience of superfans around the world with content that inspires, informs and entertains. Discovery delivers over 8,000 hours of original programming each year and has category leadership across deeply loved content genres around the world. Available in 220 countries and territories and nearly 50 languages, Discovery is a platform innovator, reaching viewers on all screens, including TV Everywhere products such as the GO portfolio of apps; direct-to-consumer streaming services such as Eurosport Player and MotorTrend OnDemand; digital-first and social content from Group Nine Media; a landmark natural history and factual content partnership with the BBC; and a strategic alliance with PGA TOUR to create the international home of golf. Discovery's portfolio of premium brands includes Discovery Channel, HGTV, Food Network, TLC, Investigation Discovery, Travel Channel, MotorTrend, Animal Planet, and Science Channel, as well as OWN: Oprah Winfrey Network in the U.S., Discovery Kids in Latin America, and Eurosport, the leading provider of locally relevant, premium sports and Home of the Olympic Games across Europe. For more information, please visit [corporate.discovery.com](http://corporate.discovery.com).

In the UK, we are an active member of the Commercial Broadcasting Association and make extensive cross-references to the COBA position in this response.

### **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.**

We agree entirely with the COBA position here. In principle the alignment between linear and on-demand makes sense, although we would add a note of caution in that many of our on-demand services are today based on linear content, which is already compliant, but that may evolve over time.

As COBA states, "this is a complex area and requires a careful, proportionate approach" - while we are not currently active in the provision of children's content in the UK, we agree in principle that government should ensure alignment between GDPR, AVMSD (Art 6a) and the proposed Code on Age-Appropriate Design from the Information Commissioner's Office.

#### **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**

Joint answer to QQ 2-6

Again, this makes sense in principle – Discovery, like many broadcasters, has been calling for a gradual equalisation of regulation as between broadcast and non-linear for some time.

But we would caution against being prescriptive as to the techniques used. UK consumers are, from linear content, already familiar with the pre-tx acoustic warning rather than with on-screen visual symbols. They're less familiar with on-screen symbols or bugs. While this may change as viewing patterns continue to evolve – notably through Netflix and Amazon increasing the consumer acceptance of on-screen information – Ofcom should proceed carefully to avoid imposing unreasonable requirements on industry.

**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)**

Please see above

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

Please see above.

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

Please see above

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

n/a.

## 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 have nothing to add to the COBA response on this point.

**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

n/a

**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.

In principle it is difficult to argue against even a modest liberalisation of television advertising. By definition, neither we nor the regulator can know whether this reform would generate more revenue and be able to balance viewer comfort with that revenue – so it is not possible to “provide evidence” on this point.

Instinctively we feel it would probably work better in some genres than others, and that demand for that additional flexibility would probably only happen a few times a year on most channels.

The most sensible way for Ofcom to gather evidence as to whether or not this reform would be helpful would be to run a trial with some broadcasters. We would be interested in participating in such an experiment.

## 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

As per the COBA response, the proposals from Ofcom are disproportionately ambitious on the timescale, requiring full compatibility with access services targets within four years for on-demand, compared to ten for linear. Again, this may be manageable for services which are largely based on linear content, but this will be much harder to manage for digital-first services, particularly those reliant on third party content sourced from outside the UK.

**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

n/a

## **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

No. we would question the added value of this exercise, particularly post-Brexit once the UK is no longer obliged to supply this information to the European Commission. Ofcom is adequately resourced and has good industry contacts, so would be well aware of any issues arising in the provision of original content without this rather time-consuming exercise.

**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

see below – we are sceptical about the case for prominence of European content in on-demand and see little value in Ofcom working on this.

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

We agree with COBA that requirements on algorithms that support search terms would be counter-productive.

As per our scepticism about Ofcom monitoring quota compliance for EU content, we would question the added value of producing guidance here across all on-demand platforms. For some categories, principally those offering high-end drama, this may be marginally relevant as some viewers may

choose to watch, e.g., British or French movies and series. For factual or sport based SVODs, this is much less likely to be a determining factor in viewer choice.

If the future relationship between the EU and the UK doesn't oblige Ofcom to produce these guidelines, we'd suggest they could be dropped without adverse impact on either the market or consumer choice.

Government should also keep an eye on the evolution of UK policy post-Brexit. Obviously the need to make our business "Brexit-proof" has led Discovery, and several of our competitors, to relocate licences and staff to within the EU27. The UK, which for years was almost the default choice for global media groups' European business headquarters, will now have to compete with EU hubs for services, talent, and ultimately tax revenues, so will need to mitigate against the damage caused by no longer being able to offer access to EU markets. The less onerous content regulation can be, the more attractive the UK will be for investment. This is particularly the case in OTT services, which certainly for Discovery, are rolled out in a few attractive markets first before global rollout. It will be in the interests of the UK to ensure its place among these first priority markets.

**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)**

See response to Q14 above.

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

See response to Q14 above.

**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**

Yes. We strongly support the COBA response here, in particular its cross-reference to the work carried out by the Association of Commercial Television in Europe (ACT) – of which Discovery is also a member - which to our knowledge is the only methodology which aims to address the ambiguities and confusion in the AVMS text.

Crucially, as both ACT and COBA point out, any calculation for quotas must be based on the size of individual channels or on-demand services, rather than the overall corporate group of which they

are part. In a global business such as Discovery, any new venture, or launch of an existing venture, must have a sustainable stand-alone business case.

To quote COBA:

To support smaller channels and on-demand services, and foster the development and growth of new ones, it is crucial to understand the degree to which individual services must stand on their own even within a larger media group. Channels and services may form distinct corporate divisions or operate as separate companies, such as in the case of joint ventures. They may do their own commercial deals and be responsible for delivering their own services. Some companies may negotiate pan-territory ad sales deals, for example, but many do not, particularly smaller ones. Channels and services, particularly smaller ones, often still have to pay for the individual programme and music licences that are used in that country, as well as for the technical infrastructure and language services for each and every piece of content they use.

In VoD, the costs of delivery for content providers are significant: every platform has different delivery requirements in every market.

Ultimately, in linear and on-demand, an individual service is absolutely assessed as a standalone business case. The delivery, language reversioning, tech spec, accompanying materials (e.g. images, paperwork) are different for every service, and that must be added up and compared to the projected revenue before a company can launch a new service in any territory.

Defining low audiences: In terms of defining low audiences, we also support the approach suggested by ACT, which sets out a 20%/80% model based on the Pareto Principle. Under this system, 20% of channels account for 80% of audience share. The long tail of channels that falls outside the top 20% would be excluded.

In the UK, this would equate in practice to channels with an audience share of under 0.5% being excluded. This would be in line with the threshold adopted by Ofcom for determining which channels should be exempted from reporting on originations in the last PSB Review due to their size, and also consistent with Ofcom's approach for access services.

Defining thematic services: Finally, we agree largely with the ACT definition that thematic services should be those that are "dedicated to a specific genre or topic and intended for a specific target audience." This exemption must include news, sports or other genres that meet this definition, linear and on-demand, subscription and ad-funded.

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

Yes. There is no remotely convincing evidence of market failure in UK original content production. Where specific issues exist – as may be the case within children's content – government and Ofcom are already aware and have the relevant policy tools to address this.

**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 entirely agree with the government on this point. Decisions on programming are better taken by television professionals not by committees of officials.

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

No

**Questions on business impact**

We're aligned with COBA answers on most of these points.

An exception is Q18, on which COBA is silent:

**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**

We do feel that this could be a useful additional protection, at least for linear broadcasters, and see this as a sensible way of reinforcing the notion of broadcaster's "editorial responsibility" which is so central to AVMS. We're aware that this is already an issue in other European markets, and may become so in the UK. We would accept that the definitions of "media service provider" and of "editorial responsibility" may need to evolve in line with industry developments as we move towards a D2C/app-based market. But if government were to introduce a basic level of signal integrity for linear content, and to keep the principle under review in new media uses, this would have our support.

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