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Audiovisual Media Services:

DCMS Consultation Document (May 2019)

Consultation response from DMG Media

1. This response to the DCMS Consultation Document on the implementation of the Audiovisual Media Services Directive 2018 (AVMSD) is made on behalf of DMG Media, publishers of the Daily Mail, Mail on Sunday, MailOnline, Metro and Metro.co.uk. DMG media is the largest commercial publisher of news online in the UK. All our titles are subject to regulation by the Independent Press Standards Organisation, the established regulator of newspaper news content in the UK.

2. The amended EU Directive is one of a series of measures (including the Online Harms White Paper and ICO's Age Appropriate Design Code for Online Services) which, taken together as presently drafted, could impose permanent damage on online news journalism in this country. [Given the interplay of these measures, we attach for your information our responses to the other two proposals].

3. Newspaper companies must continue to have the freedom to design and organise their websites and digital content generally in a way that will attract readers of the markets they serve. Mail Online's commercial success is hard won and we attribute part of that success to the AVMSD's exemption for digital newspapers and magazines, which has been crucial in maintaining a successful regulatory regime for digital news services in the UK for many years. The application of the exemption in the UK has helped foster innovation and development of the use of video by newspaper companies to attract increasing numbers of people engaging in news and current affairs developments which, in turn, has enabled increased resources to be spent on news content.

4. The primary point we would like to make in response to your consultation is to ensure that this well established and proven working environment for UK based digital news services is not damaged by any implementing legislation, code or guidance which, against the background of ECJ case law or the amended Directive, would widen the current scope of statutory controls or alter the current regulatory regime by bringing newspaper activities within OFCOM's (or any newly created regulator's) remit.

5. We note (Section 1.1 of the Consultation document) that there may be circumstances in which the UK is not obliged to implement the amended Directive. In that event, we trust that any UK review would conclude that the current system of self-regulation of online newspaper sites and related digital services (i.e. via IPSO and advertising SROs) functions well and should continue.

6. If it transpires that the UK is obliged to implement the Directive, we support the UK's policy (section 1.2, points 10 (a) and (b)) to not go beyond the minimum requirements and, wherever possible, to use alternatives to statutory regulation. Further, the UK should take advantage of any interpretive discretion member states are allowed in the context of a Directive (as opposed to a Regulation) and ECJ case law to ensure that the UK's long-standing tradition of press freedom remains intact.

7. We therefore welcome the statements in paragraph 21 and footnote 10 of the consultation document which confirm that '*newspaper websites remain outside the scope of the 2018 Directive'.* Press freedom is a vital component of the democratic process and it is essential that newspaper news content continues to be regulated in a way that is entirely free of state interference or control, in contrast to the very different regime imposed on broadcasters operating under a state licence.

8. OFCOM's decision in the appeal by Sun Video in 2011 was widely welcomed, not only by those newspaper companies whose Rulings were subsequently withdrawn, but also by all those who understand the importance of retaining a viable and vibrant press sector which is able to respond to opportunities to expand and develop new services and new methods of presentation of news content to reach new audiences.

9. It is important that any implementing measure should avoid regulatory anomalies. It would be a confusing and inconsistent regime where, for example, a video on a newspaper website is subject to one regulatory authority, whereas that same video, conceived and created by the same journalist but distributed by a third party platform, is subject to a different regime. Implementation of the revised Directive must not result in any such substantive change in AVMSD scope or OFCOM remit in respect of news publishers. Third party distribution, whether by search (Google) or social media (Facebook) is integral to online news publishing. Just as the burden of regulation in the print sphere falls on the newspaper publishers which take the

editorial decisions involved in creating news content, not the newsagents which distribute it, so video content on newspaper websites should not be subject to a different regulatory regime when it is distributed by a third party through search or social media.

10. We are members of the UK News Media Association and support the points made in their submission in relation to regulatory scope and also in relation to advertising regulation and transparency of ownership. We, too, appreciate the time taken over the years by both the DCMS and OFCOM to discuss with the newspaper industry the importance of avoiding any adverse impact on press freedom. We trust that those constructive discussions will result in implementing measures being carefully framed to ensure that the AVMSD, if and when transposed into UK law, will not result in any broadening of regulatory scope which might endanger our websites, advertising, data collection under GDPR, distribution channels, editorial content, digital commercial activities or our ability to serve our users with the information they want and deserve.

DMG Media

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