



# Internet Association – Response To DCMS Consultation On Audiovisual Media Services Directive Implementation

## 1. Introduction

Internet Association (“IA”) welcomes the opportunity to respond to the DCMS consultation on the implementation of the Audiovisual Media Services Directive (“AVMSD”).

IA represents over 40 of the world’s leading internet companies<sup>1</sup> and is the only trade association that exclusively represents leading global internet companies on matters of public policy. IA’s mission is to foster innovation, promote economic growth, and empower people through the free and open internet – in late 2018 IA established a London office to constructively engage in the internet public policy debate in the UK.

We are firm believers in the benefits that technology brings to everyday life and the economy, and for the potential that internet innovation has to transform society for the better. IA economic analysis shows that the internet sector contributes £45 billion to the UK economy each year, and is responsible for nearly 80,000 businesses and around 400,000 jobs.<sup>2</sup> Recent IA polling found that 82 percent of British people believe that the internet had “made their lives easier and more enjoyable.”<sup>3</sup>

IA believes that the internet sector needs a balanced policy and regulatory environment to continue, and grow, its contribution to the UK economy, consumers and society in the future. The internet will drive 21st century prosperity, but there is a risk to this potential if policies and regulations are introduced which will damage the ability of the internet sector to: 1) drive UK economic growth; 2) provide services that people value highly; and 3) make a positive contribution to society.

### 1.1 Internet Companies Take Significant Action To Address Harms

In this consultation response, IA is mostly focused on the proposals relating to Video-Sharing Platforms (“VSPs”), and the interaction between AVMSD implementation and the proposals in the government’s Online Harms White Paper (“OHWP”). As an industry we are absolutely committed to reducing harms. Nobody wants the internet to be a place where anyone feels unsafe, or users are misled. We recognise that there are legitimate concerns about illegal and harmful content, and internet companies take meaningful steps to protect their users from harm on their services. Initiatives include:

- Investing significant resources in both human content moderation and, partnering with third sector organisations and researchers, developing machine-learning technology to detect and remove harmful material more quickly.
- Working closely with law enforcement, and forming the Global Internet Forum to Counter Terrorism (GIFCT) to curtail the spread of terrorism and violent extremism online.

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<sup>1</sup> IA Member Company List: <https://uk.internetassociation.org/our-members/>

<sup>2</sup> <https://uk.internetassociation.org/publications/measuring-the-uk-internet-sector/>

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<https://uk.internetassociation.org/internet-association-launches-uk-presence-with-poll-showing-overwhelming-public-backing/>



- Partnering with a number of organisations across the globe, including the Internet Watch Foundation, to work together to remove harmful CSAM from the internet.
- Forming internal online safety councils and designating employee teams to improve online safety and promote a productive and welcoming environment online.
- Creating clear pathways for people to report inappropriate or harmful content, so that it can be addressed under companies' terms and conditions.
- Investing in fact-checking services and using AI and other technology to tackle false information.
- Educating users about how online services operate and how to make the best use of them. Efforts to educate people on what is appropriate on online platforms helps guide behaviour and can help minimise the need for moderation.

Of particular relevance to AVMSD implementation is the work of IA member companies with the European Commission since 2016 to implement a Code Of Conduct On Countering Illegal Hate Speech Online. IA believes that this Code Of Conduct is a good example of industry working with policymakers to develop solutions that protect people from harmful content in a balanced, proportionate manner, and sets a positive benchmark for future codes.

## 1.2 Internet Association Online Harms Regulatory Principles

More broadly, as part of our engagement with government on the OHWP, IA and its member companies agree with the importance of proportionate regulation and previously proposed a number of regulatory policy principles to help achieve this outcome. In order to meet our shared ambitions on internet safety, and the government's Digital Charter goal to make the UK the most attractive place to start up and grow an internet company, we believe that this regulation should:

- Be targeted at specific harms, using a risk based approach;
- Provide flexibility to adapt to changing technologies, different services and evolving societal expectations;
- Maintain the intermediary liability protections that enable the internet to deliver significant benefits for consumers, society and the economy;
- Be technically possible to implement in practice, and also take into account that resources available for this type of activity vary between companies (i.e. solutions are commercially possible);
- Provide clarity and certainty for consumers, citizens and internet companies;
- Recognise the distinction between public and private communications.

IA hopes that these principles have been useful so far, and we encourage the government to take account of the principles as both the OHWP and AVMSD processes continue.

## 2. Comments On AVMSD Implementation

IA's comments on the government's AVMSD proposals are set out below, and detailed responses to the consultation questions are set out in Annex A.



## 2.1 Points To Welcome

### 2.1.1 Role Of Co- And Self-Regulation

IA welcomes that both the AVMSD itself, and the government's consultation document, recognise that co- and self-regulation can be more effective ways of achieving regulatory objectives. These types of solutions are particularly encouraged by the AVMSD in relation to advertising, where the UK already has a good track record of co- and self-regulation through Ofcom, the ASA, and CAP.

Co- and self-regulation is also relevant in other areas, for example in relation to VSPs and addressing potentially harmful content. IA has previously set out its support of self-regulatory and co-regulatory models in its response to the OHWP, and reiterates in this response that these models are tried and tested in delivering desired policy outcomes, with the benefit of ongoing input from subject-matter experts from industry.

### 2.1.2 Recognition Of Differences Between Services

IA also welcomes that both the AVMSD itself, and the government's consultation document, recognise that there are major differences between traditional media and VSPs. As a result, more targeted rules are proposed which take into account the specific nature of different services. For example, the AVMSD rightly recognises that VSPs do not have editorial control over content, and as a result it sets out different requirements compared to those placed on television broadcasters or video on-demand ("VoD") services.

A targeted approach is a key requirement for effective regulation where there are different business models and services. The internet sector is not a homogenous entity – a critical point to note – so tailoring approaches to the type of service and/or harm is key to an effective response.

### 2.1.3 Country Of Origin Principle

The AVMSD and the government's consultation document both re-affirm the country of origin principle, which is essential for the creation of an effective internal market. This also provides legal certainty to service providers, in terms of where their compliance measures will be assessed. IA welcomes the commitment to the country of origin principle.

The consultation document also reflects on the "relevance of UK withdrawal from the EU", and notes options for transposing the AVMSD into UK law depending on the outcome of Brexit negotiations. Regardless of Brexit outcomes, IA is keen that the UK maintains alignment with the AVMSD in order to ensure consistency and avoid duplicate regulation – this is particularly important in relation to the country of origin principle.

### 2.1.4 E-Commerce Directive

The intermediary liability protections in the E-Commerce Directive are critical enablers for the internet's contribution to the economy and society. IA therefore strongly welcomes the statement that *"any measures under the new rules will need to remain compatible with the liability exemption for digital*



*intermediaries in the E-Commerce Directive*". IA believes it is important to consider this point carefully when considering proposals relating to flagging and reporting mechanisms, content ratings, and hate speech in particular. We discuss below in section 2.3.2 the risks relating to the E-Commerce Directive and the proposed regulation relating to commercial content on VSPs.

### **2.1.5 Role Of Digital Literacy**

IA supports the government's general ambition for the role of digital literacy in improving online interactions, as set out in Section 3.8 of the AVMSD implementation consultation document. IA supports the proposal for a new online media literacy strategy, as set out in the OHWP, and ideally this will not only help people develop the skills to safely navigate the online word, but will also increase digital civility and make it clear to people that the required standards of behaviour offline also apply online. IA agrees with the government's view that the media literacy field is broad. The government's plan to consult widely on this strategy and undertake a comprehensive mapping exercise seem to be sensible first steps.

## **2.2 Relationship With Online Harms White Paper**

IA notes that VSPs will be obliged to adhere to a set of obligations aimed at protecting minors from potentially harmful content under a set of Principles (recital 45 and article 28 of the revised AVMSD), and that the UK government states that VSP regulation under the AVMSD will be delivered by the proposals in the OHWP.

IA further notes the supplementary consultation document published by DCMS on 24 July 2019, setting out interim proposals for VSP regulation.<sup>4</sup> IA will respond to this consultation separately by the deadline of 17 September 2019.

In the meantime, IA has the following comments in relation to the long-term proposal for VSP regulation, to be delivered by the regulatory framework proposed in the OHWP. We have previously submitted to DCMS our concerns with the proposals in the OHWP, and reiterate here our view that the OHWP proposals:

- are not sufficiently targeted or proportionate to the harms which they are designed to minimise;
- do not seek to address harms holistically; and
- have the potential to impose de facto general monitoring requirements and undermine intermediary liability protections, which are key to the internet's success;

More specifically, IA set out five specific concerns with the OHWP proposals:

- "Duty of Care" has a specific legal meaning that does not align with the obligations proposed in the OHWP, creating legal uncertainty, and would be unmanageable;
- The scope of the services covered by regulation needs to be defined differently, and more closely related to the harms to be addressed;
- The category of "harms with a less clear definition" raises significant questions and concerns

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<https://www.gov.uk/government/consultations/requirements-for-video-sharing-platforms-in-the-audio-visual-media-services-directive>



- about clarity and democratic process;
- The proposed code of practice obligations raise potentially dangerous unintended consequences for freedom of expression;
- The proposed measures will damage the UK digital sector, especially start-ups, micro-businesses and small- and medium-sized enterprises (SMEs), and slow innovation.

These concerns are relevant to the AVMSD implementation proposals related to VSPs, in particular relating to scope and definitions, and we encourage the government to take our previously expressed points into account. IA's response to the OHWP is attached to this response as Annex B, and sets out our concerns in more detail.

Further, the OHWP proposals go beyond the minimum AVMSD requirements, and are also still subject to the UK policy and legislative process, around which timing is uncertain. Given this, IA suggests that the UK implement the AVMSD requirements clearly and transparently, and notes the interim proposals in relation to VSPs, to which we will respond separately.

Finally on the relationship with the OHWP, there is a risk of inconsistency in approach and double regulation in relation to some services. The OHWP regulations would apply to anyone providing services to UK users, regardless of where the company is based geographically. Under the AVMSD country of origin principle, services will be subject to regulation in their country of origin. So if, for example, a VSP is provided to users in the UK but is based in another country, that service will potentially be subject to differing OHWP regulation in the UK, and national AVMSD implementation in their country of origin. We believe that governments should avoid this double regulation, and adhere to the country of origin principle.

## **2.3 Appropriate Measures For VSPs**

### **2.3.1 General Comments On VSP Regulation**

IA has four general comments in relation to future VSP regulation.

- First, IA believes that any measures should be practicable and proportionate, taking into account the size of VSPs and the nature of the service itself. That is, regulation should be proportionate in terms of the risk of harms occurring on a service, and also in terms of the economic development stage and size of the platform. The diversity of services and business models in this area means that a one-size-fits-all approach is unlikely to be effective in achieving the policy objectives in the AVMSD.
- Second, IA notes that the internal market requires a consistent set of regulations across countries, and believes that more detailed or stricter rules should only be implemented by a country if justified to achieve the regulatory goals. IA encourages the UK government to transpose the AVMSD requirements into UK law without gold-plating, as a compelling case has not been made for the need to introduce higher levels of regulation in the UK compared to other countries.
- Third, in line with the principles set out in the AVMSD, and as set out in Section 2.1.1 above, IA believes that the UK government should encourage the use of self- and co-regulation in relation to VSPs, as these models are tried and tested in delivering desired policy outcomes, with the benefit of ongoing input from subject-matter experts from industry.



- Fourth, while IA is supportive of independent regulators (including independent self- and co-regulators), we believe there is still an important role for government at the outset in shaping the powers, and expectations, of regulatory bodies. There have been recent experiences in the UK where delegated powers to regulators have not worked as smoothly as expected, and in the case of AVMSD implementation IA believes that there is a role for DCMS in setting expectations that regulators should take a non-gold-plated approach to regulation, consistent with our second point above.

### 2.3.2 Definition Issues

IA has four comments on definition issues relating to VSPs.

- First, and as set out in our response to the OHWP, IA believes that more clarity and guidance is required as to the definition of the categories of “harmful content” (and/or “illegal content”). A consistent approach concerning the definition of harmful content should be adopted across online providers of user-generated content (including VSPs) to ensure regulatory predictability and certainty. This will facilitate the expedient removal of truly harmful content by both online platforms and VSPs when necessary. However, the current proposals in the OHWP do not provide this clarity, particularly in relation to “harms with a less clear definition”, and IA believes that further consideration is required in this area.
- Second, IA believes that further clarity is needed on the definition of VSPs themselves. As the UK government recognises, there is a lack of clarity around the meaning of the definition used in the AVMSD and which services this would capture, and a wide range of internet services, including for example search engines, could potentially fall within scope. Industry would welcome clarity on the services in scope of regulation, and looks forward to further guidance from the European Commission on this point, expected later in 2019. In our response to the OHWP, we highlighted the need to be clear on the services targeted by regulation, and this argument also applies in relation to VSPs. We believe the definition of a VSP should be sufficiently precise such that it does not capture an overly broad range of services where the risk of harm is low and where a high regulatory burden would therefore be disproportionate.
- Third, IA considers there to be an overlap in the text between the definition of a “programme” and a “user-generated video”. As a result, there is a risk that disproportionate requirements are placed on individual creators of user-generated content if they are classified as on-demand audiovisual media service providers. IA encourages the UK government to clarify this issue and find a balanced outcome.
- Fourth, in relation to user ratings, the AVMSD calls for easy-to-use systems allowing users of VSPs to rate the content. It is not clear whether the term “user” refers to the “uploader” of the content, or the general public (i.e. the “viewer” of the content). We urge a flexible interpretation of the requirement for VSPs to provide users with “rating” systems. Crowd-sourcing “user ratings” for content would be unreliable and unworkable. Different users will have different views of what rating should be given to a particular piece of content. To meet the goals of the AVMSD, the focus should be on providing an “uploader” with the ability to “rate” content as requiring age-gating, and “users” should be able to flag content using established processes for reporting breaches of community guidelines.



### 2.3.3 Advertising Co-Regulation

As set out in Section 2.1.1 above, IA welcomes that both the AVMSD itself, and the government's consultation document, recognise that co- and self-regulation can be more effective ways of achieving regulatory objectives. Solutions such as these are particularly encouraged by the AVMSD in relation to advertising, where the UK already has a good track record of co- and self-regulation through Ofcom, the ASA, and CAP.

In relation to commercial communications on VSPs, IA notes that the current self-regulatory enforcement of the CAP Code is not sufficient to meet the requirements of the revised AVMSD. Going forward, IA supports a similar co-regulatory approach for VSP advertising regulation to that in place already for VoD advertising regulation, through the ASA and Ofcom.

The AVMS Directive provides obligations for VSPs in relation to “audiovisual commercial communications that are marketed, sold or arranged” by it. This could be taken to capture any paid advert on a VSP and could, at its widest reading, lead to VSP liability in relation to commercial content of which it is not aware, or for which it does not have editorial responsibility (e.g. because it was created by users via Google Ads), on the basis it had “marketed” or “sold” it. We believe that this is inconsistent with the intermediary liability protections set out in Article 14 of the E-Commerce Directive. These rules should be measured and proportionate: a VSP cannot comply with these rules without monitoring the content of ads, and knowing when product placements or sponsorship occur. IA therefore believes that the proposed rules should only apply to advertising over which the VSP has meaningful control.

## 2.4 Measure Relating To Protection Of Data Of Minors

IA notes that the AVMSD prohibits providers from processing minors' personal data, which has been previously collected for age-verification purposes, for commercial purposes. The government's consultation document states that this goes further than the requirements set out in Article 8 of the GDPR, which allows the processing of children's personal data to the extent that consent is given or authorised by the holder of parental responsibility over the child.

IA is concerned that the restriction on using personal data gathered as part of the age-verification process is overly-broad, and may have the unintended consequence of preventing a platform from using that data for any other purpose. While an adequate level of protection for users – particularly children – must be guaranteed when it comes to data protection, it is important that companies are not prevented from processing data where they have a valid purpose, and there are several valid purposes for the processing of the personal data of a minor other than to establish child protection mechanisms.

IA also notes that there is the potential for overlap with the ICO's Age Appropriate Design Code, and a lack of certainty about how the ICO Code and the AVMSD will be implemented by different regulators. Industry would welcome more clarity and alignment on these issues.

## 3. Regulatory Impact Assessment

IA notes that the AVMSD implementation consultation document states “the impact of changes for VSPs will be assessed as part of the Online Harms White Paper”. IA strongly supports the government





undertaking a full regulatory impact assessment of the OHWP proposals, including in relation to VSPs.

In our response to the OHWP, we recommended that the government undertakes a full regulatory impact assessment of the White Paper proposals, covering the economic impact (in particular the impact on start-ups and small- and medium-sized enterprises) and impacts on freedom of expression and privacy, and we reiterate that recommendation here.

## 4. Concluding comments

IA welcomes the opportunity to respond to the consultation on the implementation of the AVMSD. IA supports balanced, proportionate regulation that achieves the joint objectives of protecting people from harm online and ensuring that the internet can continue to deliver benefits to the economy and society.

IA has proposed a number of regulatory policy principles, in relation to the OHWP, which it believes can help deliver this outcome. Given the proposed interrelationship between the OHWP proposals and AVMSD implementation in relation to VSPs, IA encourages the government to take these principles into account as it develops policy further in this area.

IA and its members will continue to work with policymakers and regulators on these important issues to achieve the right policy balance, and looks forward to responding to the supplementary consultation document published by DCMS on 24 July 2019 on interim proposals for VSP regulation.





## Annex A: Consultation Questions

### 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.*

Due to technical developments and further media convergence, we agree that there is generally a need to modernise the protection of minor requirements for linear and on-demand services. However, given the inherent difference between on-demand (pulled) and linear (pushed) content, it is appropriate that there will be some differences in the regulation of both.

For example, our members do not consider the application of watersheds to be a suitable tool for on-demand services as this would not correspond with the nature of the service and consumers' expectations to access such service at any time. Similarly, our members experience is that mandatory PIN-protection systems that generally block access to certain content create consumer frustration, particularly in adults-only households, and are therefore increasingly less accepted due to the general availability of effective alternative technological means such as parental controls.

In general, digital on-demand services (TVoD and SVoD) are already offering more means to protect minors from harmful content. Parental control technology has proved to be an effective tool that allows parents to restrict access of content to their children while at the same time allowing adult users unlimited access to on-demand content. Therefore, s368E of the Communications Act 2003 should strengthen self-regulatory efforts by on-demand service providers rather than apply obligations from the linear world that do not correspond with technological developments and changed user behavior.

*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.*

Our members consider a general update by Ofcom of the relevant sections of the Broadcasting Code to



be sufficient. Even though there is no special rating systems for VoD content in the UK, many on-demand providers have introduced self-regulatory measures such as the application of the BBFC age-rating classification system for television and movies and individual content descriptors.

In case the government would consider further steps necessary, there is a preference for a co-regulatory body to issue guidelines. A mandatory standardised system of content descriptors does not seem to be necessary as it would be additive to the already available information provided in the description of the VoD asset (i.e. such as age-ratings, information on genre, actors, storyline). Thus, the effect of standardised content descriptors is at least questionable as they could be easily “overlooked” by the consumer due to the vast amount of already provided content information.

*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 answer 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 answer above.

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

The introduction of a mandatory standardised system of content descriptors or age-ratings could create obstacles for UK licensed on-demand service providers who would like to offer an EU-wide service. Due to local cultural differences on the appreciation of what is harmful or not for minors and the lack of common definitions of harmful content, a UK standardised system could lead to user misinterpretations in other EU countries.

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

IA supports self- and co-regulatory models, and highlights, for example, that there are already successful self-regulatory measures put in place by on-demand service providers to ensure sufficient information to protect minors.

## **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.*

IA welcomes that both the AVMSD itself, and the government's consultation document, recognise that co- and self-regulation can be more effective ways of achieving regulatory objectives. These types of solutions are particularly encouraged by the AVMSD in relation to advertising, where the UK already has a good track record of co- and self-regulation through Ofcom, the ASA, and CAP.

In relation to commercial communications on VSPs, IA notes that the current self-regulatory enforcement of the CAP Code is not sufficient to meet the requirements of the revised AVMSD. Going forward, IA supports a similar co-regulatory approach for VSP advertising regulation to that in place already for VoD, through the ASA and Ofcom.

In addition, IA reiterates its view that regulation should be measured and proportionate. In relation to commercial communications and VSPs, IA believes that the proposed rules should only apply to advertising over which the VSP has meaningful control.

### **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*

*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?*

In relation to on-demand services, our members are supportive of the approach to transpose the AVMSD into legislation but to defer to Ofcom to implement the details, taking into account the anticipated EU Commission Guidelines.

*15. Noting that prominence in on-line catalogues could encompass a wide range of practices (eg 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)*

We would consider dedicated search (i.e. enable viewers to search for European works, as a genre or category) as appropriate.

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

Our members support enabling viewers to search for European works if they wish to do so. In the context of personalising a viewer's experience (for example, through providing recommendations), our members believe that the quality and relevance of content, rather than merely its origin or creator, should be the overriding criteria for proactively surfacing content to viewers. Viewers seek recommendations that align with their interests and accordingly high quality European works should be attractive to European viewers. In this way, our members believe that market-led solutions are capable of ensuring that European works will remain discoverable with an appropriate level of prominence.

The introduction of prominence obligations as regards European works, and any guidance in relation thereto, should be considered in parallel with, and not distinct from, any expansion in scope of the existing public service broadcaster ("PSB") prominence obligations to on-demand providers. To the extent prominence obligations exist in respect of both PSBs and European works, measures adopted to comply with any PSB prominence obligations should be capable of similarly achieving compliance with European works prominence obligations.

*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.*

Yes.

*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 the revised AVMSD recognises, the audiovisual industry is undergoing profound technological change – change that is proving to be positive for customers, as it allows new entrants, more choice, and innovative services. As large investors in Europe, our members support the resulting media pluralism



and recognise the cultural importance of European content, and are significant contributors to its creation. Customers engage with local content and accordingly our members have been investing, and will continue to invest, in European works in order to meet customer demand and to continue making a broad range of content available to customers. Further, prominence obligations ensure that audiovisual works are adequately ‘findable’ in VoD catalogues. On this basis, our members see no need to impose financial obligations which will act as barriers to new (European) players and create industry distortions.

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

No.

### **Questions on implementation – Video Sharing Platforms**

IA will respond to questions 21 through 24 together, please see text below question 24.

*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.*

*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?*

*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;*

*☐ the appointment of an independent regulator; and*

*☐ the funding and enforcement powers of said regulator.*

IA notes that VSPs will be obliged to adhere to a set of obligations aimed at protecting minors from potentially harmful content under a set of Principles (recital 45 and article 28 of the Revised AVMSD),



and that the UK government states that VSP regulation under the AVMSD will be delivered by the proposals in the OHWP.

IA has a number of concerns with the OHWP and the regulation of VSPs, as set out in Section 2.2 of this response and our separate submission on the OHWP itself. A key concern is that the OHWP, as currently drafted, goes far beyond the requirements of the AVMSD, and we encourage the UK government to take a more risk-based and proportionate approach to regulation.

In relation to Ofcom and interim arrangements, IA notes the supplementary consultation document published by DCMS on 24 July 2019, and will respond to that consultation in due course.

### **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)?*

IA supports the government's general ambition for the role of digital literacy in improving online interactions, as set out in Section 3.8 of the AVMSD consultation document. IA supports the proposal for a new online media literacy strategy, as set out in the OHWP, and ideally this will not only help people develop the skills to safely navigate the online world, but will also increase digital civility and make it clear to people that the required standards of behaviour offline also apply online. IA agrees with the government's view that the media literacy field is broad, and the government's plan to consult widely on this strategy and undertake a comprehensive mapping exercise seem to be sensible first steps.

### **Questions On Business Impact**

#### **Questions on business impact – Protection of Minors**

*3. Do you expect the new measure which restricts processing, collecting or otherwise generating personal data of minors for commercial purposes set out in Article 6a(2) to impact your audiovisual media service (or video sharing platform in the case of VSP providers)?*

*a. Yes (please give details)*

*b. No*

*c. Don't know*

From our point of view, it is unclear how the new measures correspond to the obligations set out by the General Data Protection Regulation (GDPR). The GDPR has limited the possibility of having a *lex specialis*. Therefore, we would expect that the AVMSD could not deviate from GDPR principles concerning the processing of personal data of minors. Thus, it is not clear what kind of personal data of minors could be processed under article 6a(2) that are not already covered by the GDPR.

IA notes that the AVMSD prohibits providers from processing minors' personal data, which has been previously collected for age-verification purposes, for commercial purposes. The government's consultation document states that this goes further than the requirements set out in Article 8 of the



GDPR, which allows the processing of children's personal data to the extent that consent is given or authorised by the holder of parental responsibility over the child.

IA is concerned that the restriction on using personal data gathered as part of the age-verification process is overly-broad, and may have the unintended consequence of preventing a platform from using that data for any other purpose. While an adequate level of protection for users – particularly children – must be guaranteed when it comes to data protection it is important that companies are not prevented from processing data where they have a valid purpose, and there are several valid purposes for the processing of the personal data of a minor other than to establish child protection mechanisms.

## **Annex B: Internet Association OHWP Response**

See separate attachment.

**Internet Association**  
**16 August 2019**