

Implementing the Audiovisual Media Services Directive 2018 (AVMSD)

Call for Evidence

Evidence Submitted by the Professional Publishers Association (PPA)

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Sent by email to avms-consultation@culture.gov.uk

About Us

The Professional Publishers Association (PPA) stands for professional publishers, representing magazine media and business information publishers in consumer, customer and business sectors in the UK. Our membership comprises over 260 companies, publishing around 2,500 consumer magazine titles and 4,500 business-to-business publications; as well as data and information products. The PPA's membership incorporates the UK's largest publishing houses, including Ascential, Bauer Media Group, Centaur, Condé Nast, Dennis Publishing, The Economist, Haymarket Media Group, Hearst UK, Immediate Media, TI Media, and William Reed Business Media as well as many smaller independent publishers. A full list of members can be found here:

www.ppa.co.uk/Resources/Members

Executive Summary

PPA welcomes the opportunity to respond to the Government's consultation on its proposed approach to implementing the revised Audiovisual Media Services Directive 2018 (AVMSD), which sets out a regulatory framework to oversee the EU-wide coordination of national legislation on all audiovisual media.

We broadly support the Government's approach to implementing the revised AVMS Directive. However, we have concerns about the outcome of this process, and hope that implementation respects the "principal purpose" and "essential functionality" tests within the definition of video-sharing platforms to avoid broadening of the scope of the statutory AVMS regime, the remit of Ofcom or any other statutory regulator in conflict with the regulatory regimes already in place in respect of news publishers, magazine websites and news brands' online editorial and advertising content.

The Government should prioritise the safeguarding of press freedom when framing any UK primary legislation, secondary legislation, codes or guidance, to ensure magazines and news publishers remain outside the scope of the AVMSD; particularly during the implementation of new legislation, co-regulation or other regulatory measures.

Any legislation resulting from the directive should ensure strong press freedom safeguards, exemptions and restrictions that clearly and effectively exclude news publishers and their editorial and advertising content, in a platform neutral manner, from the scope of any revised regulatory regime and from the remit of any statutory regulator.

This respect for press freedom should also apply to the directive's interaction or integration with other regulatory changes being instigated by the UK Government. These include any changes arising from:

- the AVMS consultation paper;
- the separate consultation on implementation requirements for video-sharing platforms in the AVMSD 2018;
- the Online Harms White Paper;
- ICO codes under the Data Protection Act 2018 (including the proposed statutory Age Appropriate Design Code);
- the DCMS consultation on further advertising restrictions on HFSS and 'online watershed' and;
- the DCMS review of online advertising regulation.

The consultation paper suggests that the Government intends to integrate the revised AVMS regime with the proposals in the Online Harms White Paper and the requirements of the ICO Age Appropriate Design Code. We have therefore attached our responses to these consultations as part of our response to this consultation. These set out the magazine industry's opposition to the online harms and ICO proposals, in view of their threat to press freedom, press sustainability and business impact.

The PPA has seen and supports the consultation submissions of the Advertising Standards Authority (ASA); which reflects upon the directive's implications for the advertising industry, and the News Media Association (NMA), and its recommendation that news publishers are exempted from future legislation derived from the AVMSD, to avoid any adverse impacts upon press freedom.

AVMS Directive Consultation Paper

Scope of Magazine Websites

The PPA welcomes the assurances made within paragraph 21 of the consultation paper and footnote 10 which confirm that newspaper websites remain outside the scope of the 2018 directive and that any interpretation of 'standalone parts of newspapers' websites' which might fall within scope should be reflective of the current position. We expect the same exemption to be granted to magazine publishers, on the grounds that the current directive recital 28 provides that '*The scope of this Directive should not cover electronic versions of newspapers and magazines.*'

From reading the consultation paper, we observe that neither the current regime nor the revised directive stipulates that only 'occasional' use of video is a requirement for the normal exclusion from scope of electronic versions of newspapers (and magazines). We therefore assume that the consultation paper is stating that 'occasional' use of video on websites, blogs and portals falls outside the scope of the new provisions.

If the UK were no longer an EU Member State but wished to revise the UK AVMS regime in any circumstances, the PPA would be happy to be consulted upon and discuss any reinforcement of appropriate exclusion from scope of news publishers and magazine websites or any part of them, or any redefinition of statutory AVMS scope and remit. Such exclusion would complement the regulatory regimes already in place and applied to the commercial activities of publishers of newspapers and magazines whether on-line or in traditional paper formats.

The PPA would wish for clear assurances that the Government will not extend the scope of the AVMS regime and remit of Ofcom in respect of news publishers and their digital services.

The new legislative regime must ensure that magazine websites and activities which currently fall outside the scope and remit of the AVMS regime should continue to fall outside the revised regime with reference to existing EU case law.

The revised regime must also continue to allow innovation and development of the use of video within magazine websites, as these evolve to ensure that the ever-growing audience for PPA members' trusted editorial content continues to be attractive and engaging. This can be done when recognising the "principal purpose" and "essential functionality" tests which are provided for in the definition of video-sharing platforms within the 2018 directive. For magazines, video content will continue to be relevant to the editorial coverage provided in any section of a magazine website, whether as a component of an article or specialist feature.

Our publishers must also continue to be free to design and organise their websites and to offer their ever-evolving digital services to their audience in the most convenient and accessible manner. They must retain the ability to determine how their website content might be best presented and navigated, without fear that the inclusion of video content or provision of any index to video content will subject them to additional (and potentially conflicting) statutory control through implementation of the revised AVMSD. It is important that the revised AVMS regime does not restrain innovation, audience access or engagement with publishers' content.

Related to this, we trust that the Government will ensure that implementation of the revised directive will not result in any 'regulatory creep' and any new legislation will be drafted to make sure that news publishers' online activities and websites which are not within scope of the current regime will not be enmeshed in the future statutory AVMS regime.

Recital 6 of the revised AVMSD recognises the exclusion of electronic versions of magazines which carry video clips or allow some video sharing from the scope. It also sets out what is not intended to be covered, for example, 'video clips embedded in the editorial content of electronic versions of newspapers and magazines and animated images such as GIFS.' We hope the Government will ensure these exemptions are incorporated into the implementation strategy.

The PPA would strongly oppose any Government proposals for implementation of the revised AVMSD, including all the new regulatory requirements relating to video sharing platforms, or related legislation including the Online Harms White Paper, which might deliberately or inadvertently extend and impose AVMSD or related requirements, restrictions, liabilities and sanctions upon news publishers, magazine websites, content and services where these are outside scope of the AVMSD.

Scope and advertising regulation

The PPA and its members support the self-regulatory system for online editorial and advertising content, through existing regulators IPSO and the ASA.

Ofcom has designated the ASA to regulate advertising in the on-demand services notified under the Audio-Visual Media Services Directive, using rules that have been copied out of the Communications Act in an Appendix to the CAP Code.

The PPA would challenge any implementation strategy that would entail any change to the self-regulatory status of the non-broadcast CAP Code applicable to news publishers' advertising and marketing activities, including magazines' websites and digital activities, which fall outside the scope of the revised AVMSD. We would also object to any extension of co-regulation, statutory underpinning and the remit of Ofcom or other statutory regulator to magazines' websites or other matters which do not fall within scope of the revised AVMSD.

Finally, the Government should resist broadening the application of the 2018 directive's prohibition on audio visual service providers' and video sharing platforms providers' processing of minors' personal data for commercial purposes such as direct marketing, profiling and behaviourally target advertising in certain circumstances. Such prohibitions; and other restrictions, duties, responsibilities, liabilities and sanctions; must be confined to those within scope of the revised directive and must not be extended to those outside its remit.

Conclusion

It is important that the Government prioritises press freedom and the requirements of press publishers when implementing the 2018 AVMS directive, whilst also taking into consideration the existing regulatory environment and the exemptions required to ensure that they can continue to fulfil their responsibilities.

Failure to do so could have damaging repercussions for journalism and the publishing industry, as well as their capacity to act as the fourth estate, providing a social good by producing public interest news.

Simultaneously, we support the need for a joined-up implementation approach that will dovetail other policy programmes, particularly the Online Harms White Paper and the ICO Age Verification Code, and the PPA concerns submitted during the consultation period for each.

The PPA would be happy to discuss any issues in more detail. Please let us know if you would like the PPA to facilitate any meeting.