



By email to: avms-consultation@culture.gov.uk

04/07/19 (Thursday)

SafeCast sets out below its response to the DCMS consultation. Please note that in the electronic version of this PDF document there are working hotlinks to associated materials.

Questions on implementation - Protection of Minors

Question 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.

Response to Question 1: **Yes**

The reason for our positive response is as follows:

In December 2013, in correspondence in my personal capacity with Ofcom, I raised this same issue where I sought to align the protection of minor requirements for linear and on-demand.

In my letter to Ofcom I outlined how a deployment of the SafeCast technology could achieve these objectives. In reply Ofcom on 17 January 2014 said:

Your letter raises some very interesting points about the challenges new technologies and internet connected devices create for audience protection and children in particular. Ofcom has also been considering these particular challenges and thinking about the ways we could develop the audience protection and assurance regime for audiovisual content in the future. For example, you may be interested in reading [our recent submission to the European Commission's Green Paper 'preparing for a fully converged audiovisual world', which looks at similar issues to those that you raise.](#)

Your letter suggests that a mechanism should be in place to enable Ofcom to require all connected devices to be aware of the nature of content and filter it in accordance with the watershed requirements before it can be shown on the main television. Ofcom, of



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course, welcomes any new measures to provide additional protections to children. However, I must be clear at the outset that we do not have any statutory duties or powers to enforce the watershed beyond broadcast television services. I explain Ofcom's current statutory powers in relation to the watershed in more detail below.

Legislative background

Broadcast content

Under Section 319(1) of the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure certain standards objectives. These standards are set out in Ofcom's Broadcasting Code ("the Code") in the form of rules which broadcasters must comply with. These standards objectives include: "that persons under the age of eighteen are protected" and the Code includes a specific rule which states that "television broadcasters must observe the watershed". We consider the standards we have set for the protection of children to be amongst the most important; however, our statutory duty to enforce the watershed is only applicable to television broadcasters.

On-demand content

Ofcom has formally designated the Authority for Television On Demand ([ATVOD](#)) as the co-regulator for editorial content on on-demand programme services (ODPS); which are essentially services whose principal purpose is the provision of programmes the form and content of which are comparable to the form and content of programmes normally included in television services, i.e. TV-like video on demand (VOD) services. VOD services are regulated in accordance with the minimum requirements of the Audio Visual Media Services Directive (AVMSD), set at a European level, and are subject to far fewer standards protections compared to linear broadcast services licensed in the UK.

Therefore, while VOD service providers can voluntarily put in place measures intended to have a similar effect to the watershed (e.g. parental locks or controls), under AVMSD, there is no legislative requirement for regulated VOD services to apply the watershed. [My emphasis]

In summary

Any changes to enforce the watershed more broadly, to include regulated





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on-demand content delivered to television sets, would require more than a simple Ofcom rule change. It would instead require a significant change to legislation at either a UK or European level; and any such change to legislation will be a matter for the Government to consider, rather than Ofcom. We would therefore suggest that you write to the Secretary of State on this matter. [My emphasis]

In 2014, SafeCast determined that **all** video could be classified into six levels to cover the spectrum of content ranging from content that did not contain any sex, violence, or horror through to content that was too graphic or horrific to be broadcast on television or circulated on the Internet. We later added a seventh level to take account of material which cannot be circulated by the general public but which is required for evidence purposes (e.g. unedited video streams of bomb explosions shown at inquests). We found that this simple classification process, dividing video into appropriate classes, mirrored the process that is regularly undertaken in the viewing rooms of the major UK television broadcasters. Professional television schedulers within the major broadcasting networks are accustomed to reviewing a programme before it is broadcast and taking a view on the earliest time that the programme can be shown, based upon the television watersheds.

Historically, there were multiple watersheds on broadcast television, early-evening, seven-thirty, nine-o'clock, ten-o'clock and eleven-o'clock. Each watershed was aimed at allowing more adult themed programmes to be broadcast with higher levels of salacious content at times when younger children were likely to be asleep. This television "watershed" system was memorably said to be a graduated system across an evening's viewing and not a 'waterfall' moment where, at a single time, content suddenly became unrestricted.

Research from Ofcom has shown that the television watershed system has in excess of 74% support from parents, teachers, politicians, academics, and children. Although the TV Watershed currently works solely on live television broadcasting, through our technology it can now be implemented on "anytime, anywhere, any device" viewing so that children of all ages and maturities are adequately protected whenever they choose to view content.

SafeCast has implemented the graduated TV Watershed classifications as hidden labels (termed SafeCast HeadCodes) embedded as metadata in video. The metadata can be inserted in accordance with existing broadcasting industry standards. With this in place, a very simple filter can then be written for video browser applications. The filter will read the hidden label in a video and decide whether the video should be shown to a child of a



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particular age or not. This Safecast filter can be part of any video browser application that can read embedded metadata. A timely rollout of the Safecast video browser filter will mean that any video can be filtered in a straightforward manner to enable universal compliance with the Section 104 of the Digital Economy Act 2017 by both broadcasters and internet service providers.

In the case of streaming a live video it is possible to have Artificial Intelligence (AI) looking at the video as it is being uploaded and, if it determines that the incorrect SafeCast HeadCode is being attached to the video stream, AI can immediately insert the appropriate HeadCode for the video stream. This action could also optionally automatically push the content over to a human reviewer who could manually override the change in the content classification. This is not censorship - this is simply protecting children and the public from materials which should not be circulated.

Safecast has granted patents which can enable a regulated broadcaster to **automate** compliance with Ofcom and ASA rules in respect of video advertising. Its patents only apply to video advertising in catch-up broadcasting and time-shifted viewing - all other use is free of charge. Under a binding undertaking given to the government in 2016, Safecast's patents are to be licensed on FRAND terms as Standard Essential Patents in the video industries.

SafeCast - post the letter from Ofcom in 2014

Because commercial law and practice is largely made by the merchant community rather than by regulators, SafeCast, in the period since receipt of this letter from Ofcom in 2014, has been establishing its metadata labelling and filtering scheme as a voluntary industry standard. Voluntary codes in the physical world, such as the practice of placing adult publications on the top shelf of magazine stands in newsagents to inhibit their perusal and purchase by young children, can be effective in achieving societal goals, provided that the voluntary code does not harm the underlying profitability of the business. SafeCast believes that the use of free voluntary codes in the dematerialised world of broadcasting and the internet are capable of achieving the desired societal goals and effects.

Our efforts started with the regulated broadcasters but shortly thereafter we realised that, with the emergence of global digital video standards, what we were proposing could be also used by internet broadcasters and all video creators to give everyone parity of protection on



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whatever platforms they were using. Our metadata labelling system is termed the SafeCast HeadCodes. It provides a free means of implementing the revised AVMSD in accordance with a best practice system which has been before the regulated broadcasting industries in the UK and the USA since 2014.

It follows that the DCMS proposal to align the protection of minor requirements for linear and on-demand could be implemented at no cost by all content video creators using our voluntary SafeCast metadata labelling and filtering scheme. The relevant industry standards community body is the Digital Production Partnership (DPP). The DPP is a '*not for profit*' organisation originally set up by the BBC, ITV and Channel 4 to reduce complexity and increase interoperability across the industry through the development of metadata standards, amongst other things. The DPP has membership across the entire UK and US television and internet industries and has a growing number of European members too. It has a specialist sub-group called the DPP Interoperable Media Format (IMF) Stakeholders Group which reviews and recommends metadata standards within the DPP IMF Specification. This is now part of the Technical Specification Process (TSP) used by the Society of Motion Picture and Television Engineers (SMPTE).

Question 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

Response to Question 2: **Yes**

In context, SafeCast believes that an updated Broadcast Code should include the following attributes within the metadata of the DPP Interoperable Media Format (IMF) Specification. This is because the updated Broadcasting Code needs to be equally applicable to both video-on-demand and linear services.



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-
- a) SafeCast Headcodes - (to enable both video-on-demand and linear services to comply with watershed restrictions and facilitate the deployment of content filtering in accordance with Section 104 of the Digital Economy Act 2017):
 - b) Provenance information - (the provenance of a video is the place that it comes from or that it originally came from);
 - c) Ownership information - (who owns the video);
 - d) Product placement flag information - (a 'yes/no' flag indicating whether the video contains specific brands or products with specific promotional intent)¹;

In 2018 the DPP and SMPTE jointly published [TSP 2121-1:2018 IMF Application DPP \(ProRes\)](#). TSP 2121 supports the specific needs of broadcasters and online content distributors. The fields which are currently mandated are based on the underlying SMPTE ST 2067-2 standards, and the draft DPP Recommendation on IMF metadata does not make any additional fields mandatory. SafeCast believes that this is a lacuna and suggests that the DCMS requires the DPP to include the above attributes in metadata in a new release of IMF specifications.

Given the normal operation of the DPP IMF Stakeholders Group, these revised DPP IMF specifications could be in operation by the end of this year (2019), enabling Ofcom to revise its Broadcasting Code in a timely manner for compliance with the revised AVMSD coming into force in September 2020.

By requiring this information to be within the metadata of video adhering to the TSP 2121 standard, it will be possible for all industry trade bodies to recommend and promote systems where viewers are provided with sufficient information regarding the nature of the content. Viewers will then be able to filter away non-compliant content and/or compliant content which they do not wish to view or allow minors, under their care and control, to view. This entire process can be undertaken without censorship through metadata labelling and lightweight child protection filters, as allowed under Section 104 of the Digital Economy Act 2017.

¹ Currently in TS2121 there is an optional Y/N field for Product Placement which can be left blank



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Question 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)

Response to Question 3: N/A

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

Response to Question 4: N/A

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

Response to Question 5: N/A

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

Response to Question 6: The government should consider a self-regulatory model for provision of sufficient information to protect minors by establishing a best practice model amongst regulated broadcasters which can be adopted by all other broadcasters and video creators.



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The suggested route is set out in our response to earlier questions, specifically Question 2, namely asking the DPP to include attributes within metadata in the next release of TSP 2121. We believe that this would be the least disruptive and most effective measure for the broadcasting and advertising industries. It would allow them to develop and deploy lightweight child protection filters within their normal software and middleware upgrade programmes. These could implement the requirements of the revised AVMSD at zero or minimal cost to the broadcasting and advertising industries. Once the revised TSP 2121 has been issued by the DPP, Ofcom could then issue a revised draft of the Broadcasting Code to come into effect from September 2020. This would give the broadcasting and advertising industries sufficient time for inclusion of lightweight child protection filters within their normal software and middleware upgrade cycles.

Age Appropriate Design Code

This approach has a further benefit. The broadcasting and advertising industries are having to comply not only with the revised AVMSD, but also with the Age Appropriate Design Code (the Code), which is to be issued by the Information Commissioner's Office (ICO) under the Data Protection Act 2018. The Code will provide guidance on the design standards that the Commissioner will expect providers of online 'Information Society Services' (ISS) to meet. ISS providers that process personal data and are likely to be accessed by children will fall within the scope of the Code.

The draft Code, published on 15 April 2019, contains the provision that ISS providers should not use children's personal data in ways that run counter to industry standards, such as the Committee for Advertising Practice (CAP) code, which covers the **transparency of paid for activity and product placement**. This recognises the results of the consultation with parents and carers whose preferred solution to this issue is to ensure that advertising content meets industry guidelines for advertising directed at children. It is thought that this regulatory conclusion by the ICO will not be discarded in the final statutory version, which is due to be published this autumn and would come into force in early 2020. Thus it is expected that the draft Code's conclusions in respect of transparency of paid for activity and product placement will appear in the **final** Code. If so, the final Code will consequently require the inclusion of information on provenance and ownership information regarding a video, as well as product placement information. Together these will be considered to be proportionate means of protecting children from being harmed.



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With the inclusion of the suggested metadata in a new release of IMF specifications, not only will the DCMS facilitate the implementation of the AVMSD via a revised Broadcasting Code, but it will be supporting the requirements of the ICO in the Age Appropriate Design Code.

Online Harms White Paper and Duty of Care

Similarly, the facility to include SafeCast HeadCodes as a free metadata label in a forthcoming DPP release will ensure that content can be filtered under all forthcoming ‘*duty of care*’ proposals for child protection purposes without censorship. The SafeCast HeadCodes enable online services to be offered to children in a manner which takes account of children’s immaturity and vulnerability. Their inclusion will enable online providers to offer children a higher level of protection than adults from content which is inappropriate for them to see at their stage of life through effective lightweight filtering. This will address the potential harm to children arising from the imminent removal of [Cleanfeed](#) technology (which is currently a default setting on internet supplied by SKY, Virgin, TalkTalk and BT) arising from the Internet Engineering Task Force’s (IETF) forthcoming introduction of a new protocol, a new standard, called “[DNS over HTTPS](#)” (DoH). SafeCast HeadCodes will thus allow online providers to comply with a key aspect of the duty of care requirements in accordance with the Government’s [Online Harms White Paper](#), published on 8 April 2019 and which seeks “*measures to ensure regulation is targeted and proportionate for industry*”.

Questions on implementation - Advertising

Question 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.

Response to Question 7: SafeCast supports the government’s approach and recommends the continuation of the co-regulation framework.



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Question 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

Response to Question 8: Yes

Question 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.

Response to Question 9: SafeCast considers that, because there is no obligation under the revised AVMSD to liberalise the advertising minutes, the best form of light touch regulation for the industry is for no precipitative action to be taken in the short term. Instead it is suggested that the DCMS should ask Ofcom to keep this topic under medium term review for possible liberalisation post 2020 in the light of evidence from stakeholders.

Supplementary point in respect of Advertising

Under the revised AVMSD, "Tobacco advertising remains forbidden in all types of media, and **additional restrictions are being extended to e-cigarettes and refills (see Article 9(1) and Article 10a).**" [My emphasis]

The DCMS has said in its Consultation "*If the UK leaves the European Union without a deal, we will not be bound to transpose the AVMSD into UK law. However, we would be free to align domestically in certain areas, following the usual government processes for amending/introducing new legislation. Further analytical work will be required to identify these areas and the best way forward, and this consultation would help inform that work.*"



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Under the terms of the proposed Withdrawal Agreement, the UK is required to implement the amended AVMSD and must therefore extend the restrictions on tobacco advertising to e-cigarettes and refills. Should the UK leave the European Union without a deal, the UK would not be bound to restrict advertising on e-cigarettes and refills. The DCMS could choose to permit advertising of e-cigarettes and refills to adults (though not of course children) as tobacco smoking cessation aids. The medical evidence in support of the use of e-cigarettes and refills as tobacco smoking cessation aids is strong. The Royal College of Physicians has reviewed the available evidence and advises GPs to promote e-cigarettes “as widely as possible as a substitute for smoking”. This would suggest that, for public health reasons the UK should allow advertising of e-cigarettes and refills to adults as tobacco smoking cessation aids under UK law.

Questions on implementation - Accessibility

Question 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

Response to Question 10; Yes

Question 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

Response to Question 11; Yes



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Questions on implementation - European Works

Question 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

Response to Question 11; Yes

Question 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

Response to Question 13; Yes

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

Response to Question 14: Yes, if an updated Broadcast Code requires the inclusion of the following attributes within the metadata of the DPP Interoperable Media Format (IMF) Specification, then these should also be considered to be core framework elements:

- a) Provenance information - (the provenance of a video is the place that it comes from or that it originally came from);
- b) Ownership information - (who owns the video);
- c) Product placement flag information² - (a 'yes/no' flag indicating whether the

² Currently in TS2121 there is an optional Y/N field for Product Placement which can be left blank



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video contains specific brands or products with specific promotional intent)

Question 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)

Response to Question 15: Other - SafeCast believes that the recent development of voice search and artificial intelligence systems which permit users to speak voice commands to interact with services (e.g. Amazon Alexa - the voice controlled Amazon personal assistant, etc.) changes the way that viewers communicate with and select video services. These changes require a review of how viewers search for video content using voice operated systems before making any new determination of prominence requirements.

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

Response to Question 16: Consideration could be given to a points based system that raises the prominence of European works in video-on-demand catalogues depending upon the nationality of the viewer. Local versions of search engines, delineated by the IP address of the searcher, could bias selections in favour of European works content within video-on-demand catalogues.

Question 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

Response to Question 17: yes



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

Response to Question 18: SafeCast does not have a view on this issue

Question 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.

Response to Question 19: SafeCast does not have a view on this issue

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

Response to Question 20: SafeCast does not have a view on this issue

Questions on implementation - Video Sharing Platforms

Question 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

Response to Question 21: yes



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

Response to Question 22: N/A

Question 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

Response to Question 23: yes

Question 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.

Response to Question 24: SafeCast's view is that all VSPs that can be viewed by people in the United Kingdom fall within the UK's jurisdiction under an unfettered common law right to defend UK citizens from coming to harm, when they are at home and at work in the UK. This right has not been abrogated by any treaties.

All VSPs that deliver video to people in the UK will be doing so though their use of global digital video standards - this is the unifying technical system which makes their content accessible. Consequently, if (as set out in our response to Question 2 herein)



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the DPP includes the specified metadata (as suggested in Question 2) in a new release of the DPP IMF specifications, after a very short time these metadata will be embedded within global digital video standards. It will then be possible for the VSPs to label their content in such a way as to enable filtering under Section 104 of the Digital Economy Act 2017. This would facilitate full compliance with the 'duty of care' provisions as set out in the Online Harms White Paper Consultation.

Specifically, in respect of the filtering provisions set out in Section 104 of the Digital Economy Act 2017, if these are read in conjunction with Section 3 of the Communications Act 2003 then SafeCast suggests that it is open to Ofcom to find, on reasonable grounds, that an organisation (which could be a VSP) is not offering internet access services in accordance with the fundamental Communications Act provisions. These include under Section 3(4)(h) "*complying with the vulnerability of children and of others, whose circumstances appear to Ofcom to put them in need of special protection*".

Questions on implementation - Signal Integrity

Question 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?

Response to Question 25: The 'signal integrity' requirement as set out in Article 7b, is an obligation on Member States to ensure 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. Recital 26 gives further detail to aid interpretation indicating that this does not apply to legitimate overlays such as subtitles, or navigation menus. SafeCast takes the view that any overlay for commercial purposes or any unauthorised modification for commercial purposes is already protected by the general common law of unfair competition which would render such actions as a form of passing off or as a deceptive business practice that causes economic harm. This



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harm should be actionable by the media service provider without new legislation being required.

Questions on implementation - Media Literacy

Question 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)?

Response to Question 26: SafeCast does not have a view on this issue.

Questions on implementation - Transparency of ownership of audiovisual media Service providers

Question 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

Reply to Question 27: No, save for the inclusion of provenance and ownership information (as set out in our replies to Questions 2 and 14 herein) as metadata in video in a new release of the DPP IMF specifications - i.e. a revised TSP 2121.

Alistair KELMAN
CEO and Co-Founder of SafeCast

