

# UK implementation of revised Audiovisual Media Services Directive

## DCMS consultation

### Sky response

Question	Response
1. Will the additional references in jurisdiction criteria, relating to the location of staff making programme related decisions, or the reference to editorial decisions, relating to the day-to-day activity, affect you or your business?	No.
2. Will the amended derogation procedures affect you or your business?	No
1. Do you agree with our proposed approach to amend s.368E of the Communications Act 2003 to align the protection of minor requirements for linear and on-demand?	Yes
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?	Yes
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: <ul style="list-style-type: none"> <li>a. Using acoustic warning</li> <li>b. Content descriptors</li> <li>c. Visual symbols</li> <li>d. Age-ratings</li> <li>e. Other means (please specify)</li> </ul>	N/A
4. Should the measures above use standardised system of content descriptors or age-ratings used for broadcast and/or video-on-demand?	We do not believe that a standardised system of content descriptors would be appropriate or in the consumer interest, and the fundamental differences between established movie ratings (BBFC or equivalent) and Ofcom's rules for linear television would make it impractical. A standardised system would remove latitude for content providers to make sensible decisions based on the specifics of their channels, platforms and audiences. Sky works closely with customer groups to understand the expectations they have for themselves and their families. This means our ratings and warnings will not always align with BBFC ratings, which often underplay elements we believe are important to our viewers, or are not appropriate in all

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	<p>circumstances. Content providers should be free to use their own systems based on their understanding of their audiences.</p> <p>As an example, currently “strong language” (e.g. ‘fuck’) is permitted at BBFC 12 certificate and above. Whilst the viewing public have come to accept this when watching movies, including during the day via linear television – this is not in-line with Ofcom’s rules where this kind of strong language cannot be broadcast on general entertainment channels before 2100 without a PIN. The framework for rating movies is not in-line with that for the framework for rating linear television. Sky agrees that age-ratings are the clearest way for viewers to understand what strength a programme is, however a standardised system would not work for Sky, nor for viewers who are used to different thresholds for content on linear television. We require the freedom to ensure that we can take our channel policy and audience expectations into account. For example, a channel such as Sky 1 will have a very different audience to Sky Atlantic. The viewers on these channels expect different things. We require the ability to tailor ratings based on knowledge of our channels and audiences (for example being more conservative on a family skewing channel like Sky 1).</p> <p>There is considerable innovation happening at the moment with warnings, descriptions and labelling. A standardised system would constrain those developments and innovations. With regard to Sky’s film ratings on Sky Cinema; we can and do differ from the BBFC ratings. There are occasions where we again might wish to reflect the expectations of our specific audience and therefore may from time-to-time apply a different rating to the BBFC where we feel our audience would expect a more conservative rating than the BBFC’s . Sky believes in increasing the ways in which viewers can garner information about a film that will enable them to make an informed decision about the content. Sky has launched an initiative to incorporate Common Sense Media information onto the Sky Q movies user interface. This provides viewers with additional, in depth information about the nature of the content within a film and will, amongst other benefits, provide helpful information for parents making decisions about what their children can watch.</p>
5. What would the benefits/obstacles be for introducing a standardised system to such content?	We do not see any benefits. See above responses regarding the obstacles.

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<p>6. Should the government consider a self- or co-regulatory model for provision of sufficient information to protect minors?</p>	<p>The Government should ensure Ofcom update the relevant sections of the Broadcasting Code and set out only high-level objectives and guidance for the provision of sufficient information.</p> <p>Creating a new regulatory model for linear and ODPS is unnecessary and would introduce new compliance burdens on providers.</p>
<p>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)?</p>	<p>Paragraph 34 says “The 2018 Directive prohibits providers from processing minors' personal data for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.</p> <p>However, this fails to recognise that the restrictions set out in article 6a(2) are limited to data collected pursuant to article 6(a)(1). On this basis, there is not expected to be a material impact.</p> <p>If application was wider, then a fuller internal analysis would be necessary to understand the implications.</p>
<p>4. Noting the government preferred approach to update s368 of the Communications Act 2003 to align the protection of minors requirements for video on demand with linear television, which would anticipate Ofcom to do a corresponding update to the Broadcasting Code. Do you expect the new measure on providing sufficient information to viewers about content which may impair the physical, mental or moral development of minors, by providing sufficient information to viewers about the nature of the content, as set out in Article 6a(3), to impact your audiovisual media service?</p>	<p>No</p>
<p>5. Would a standardised system of content descriptors or age-ratings used for broadcast and/or video-on-demand to provide sufficient information to viewers about content impact on your audiovisual media service?</p>	<p>We do not believe a standardised system is desirable and are very concerned that it would undermine existing developments and future innovations as set out in above in answers to Q3</p>
<p>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</p>	<p>We support the Government’s broader review of online advertising regulation. It will be important that AVMSD implementation does not preclude further changes that may emerge from that review. We therefore note and support government’s intention to “review our approach to implementing the VSP measures in light of our work on Online Harms.”</p>

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for advertising on linear broadcast and VoD in the UK.	<p>It is important that there is a statutory backstop for a new enhanced co-regulatory regime to cover the advertising on VSPs, whilst recognising the jurisdictional limitations of the AVMSD regime meaning that there are likely to be few or no UK regulated VSPs.</p> <p>Given the reach, influence and commercial power of VSPs in the UK such as YouTube and Facebook, the government should use its review of online advertising regulation to ensure an enhanced co-regulatory regime with statutory powers of sanction, enforcement and investigation apply to all VSPs that operate at scale in the UK.</p>
8. The government's preferred approach is not to make legislative change with regards to the change of advertising minutes. Do you agree with this approach?	Yes
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?	<p>No</p> <p>Any change to the minutage arrangements in the UK could have a significant impact on the economics of the UK television market.</p> <p>Furthermore, any minutage changes that allowed PSB services to take additional revenue from advertisers would need to be reflected in the costs and benefits of PSB licences, given how those broadcasters would be able to further exploit their various public service privileges.</p> <p>Changes to PSB minutage would need to be considered as part of the wider assessment of PSB benefits including the current deliberations surrounding PSB prominence. Any additional benefits should be accompanied by additional obligations, for example in relation to children's programming or local news provision.</p>
6. Would the further prohibitions on alcohol and e-cigarette advertising as referenced in paragraph 45 have an impact on your business?	No
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	Yes

Question	Response
Communications Act 2003. Do you agree with this approach?	
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?	Yes.
7. Would reporting obligations, set out in Article 7(2) of the 2018 Directive, occur any administrative costs to your business? If so, can you quantify them [answers must be provided as total cost in pounds sterling]?	There should be no or very minimal extra administrative costs. We are already required to submit an annual accessibility report to Ofcom in relation to our licenced EPG and so the slightly broader but less frequent report shouldn't create a significant amount of new work.
8. Would the development of accessibility action plans in respect of continuously and progressively making services more accessible to persons with disabilities, as set out in Article 7(3), occur any administrative costs to your business?	There is not likely to be much/any additional cost in the developing of the action plans as these will go hand-in-hand with the reporting requirements. However, there will of course be considerable cost attached to the carrying out of the action plans i.e. development work required in order to improve accessibility over time.
9. Would the new requirement on the accessibility of emergency communication have any impact on your business?	No
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?	Yes
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?	<p>Ofcom should take the guidance published by the European Commission and make sure it is suitable for UK services and does not impose any unnecessary burdens or prescriptive rules on how ODPS organise their catalogues and UIs. ODPSs change their look and feel regularly in line with user testing and customer research. The government and Ofcom should be careful not to harm innovation and gold-plate requirements.</p> <p>Any guidance should be outcome-focused and make EU-wide compliance easy. Guidance on examples of compliance would however be useful.</p>
14. Are there core framework elements that should be included in this requirement to produce guidance?	<p>The guidance should be light-touch with assessment and measurement looked at over a long period of time rather than a snapshot.</p> <p>It should take into account personalisation of services and not seek to prevent personalisation through prescriptive rules on when particular content should be surfaced.</p>

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<p>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:</p> <ul style="list-style-type: none"> <li>a. Separate section</li> <li>b. Dedicated search</li> <li>c. Information on home page</li> <li>d. Other (please specify)</li> </ul>	<p>d. Other</p> <p>We do not support prescriptive solutions, instead favouring an outcomes-focused approach.</p> <p>Sky already offers a separate section Sky Originals in its Now TV and Sky Q interfaces. It is important that services are able to brand these sections as they wish and not have to label them "European works", which will mean little to audiences.</p> <p>Dedicated search and compulsory information on the home page would be regulatory overreach into user interface design and would overcomplicate the customer journey and constrain its further development.</p>
<p>16. What would be your preferred way of introducing a new prominence requirement for European works content on video-on-demand catalogues?</p>	<p>Flexible approach that does not prescribe a particular methodology for giving prominence to European Works</p>
<p>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</p>	<p>Yes</p>
<p>18. Do you consider that the current level of funding for European Works in the UK is sufficient? Please provide evidence.</p>	<p>Yes - there are significant public interventions in the UK in order to create a sustainable funding model for public service content.</p> <p>In addition UK commercial broadcasters invested over £1bn in original commissions in 2018.</p> <p>Sky recently announced plans for Sky Studios, a new Europe-wide development and production capability. Under the Sky Studios plan Sky's investment in originals will more than double from the current level over the next five years.</p>
<p>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.</p>	<p>No.</p> <p>There is already substantial investment in European works from both the BBC, commercial PSBs and commercial broadcasters in the UK as a result of the current combination of regulatory intervention and market economics.</p>
<p>20. Are there alternative methods of funding European Works that you wish to provide views on?</p>	<p>No.</p>

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10. For on-demand providers, how much of your catalogue currently consists of European works (based on minutage)?	<p>Sky most recently reported these figures to Ofcom in relation to the 2018 calendar year. These figures are quoted below.</p> <table><tr><th>Service</th><th>Total hours of EU works</th><th>Percentage of total hours of programming comprising EU works</th></tr><tr><td>Sky Store</td><td>9588.04</td><td>21.65%</td></tr><tr><td>Sky On Demand</td><td>20,763.67</td><td>32.55%</td></tr><tr><td>Sky Go</td><td>12,696.44</td><td>36.39%</td></tr><tr><td>NowTV</td><td>12,683.74</td><td>36.27%</td></tr></table>	Service	Total hours of EU works	Percentage of total hours of programming comprising EU works	Sky Store	9588.04	21.65%	Sky On Demand	20,763.67	32.55%	Sky Go	12,696.44	36.39%	NowTV	12,683.74	36.27%
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11. For on-demand providers, how much of your catalogue currently consists of European works (based on titles)?	We do not currently report this data.															
12. Will meeting the new 30% requirement of European works in on-demand catalogues financially impact your business?	No															
13. Will making European Works prominent in your catalogues financially impact on your business?	It is unlikely to financially impact Sky’s business if implemented in a proportionate and outcome-focused way. If a more prescriptive approach is taken this will constrain our ability to develop the best UIs for our customers, and harm Sky’s ability to compete.															
14. Noting that the European Commission is required by Article 13 to publish guidance on the definition of low audience and low turnover. Do you anticipate that your on-demand service to be exempt from the obligations on the basis of a low audience or low turnover definition?	No															
15. Do you expect the new reporting obligations mentioned in paragraph 66 to generate any additional costs to your business?	No															
16. How much revenue do you currently generate from EU countries if transmitting in the EU? Please give your answer to the nearest £1000.	Sky reported revenues for 2018 of £13,585m. This includes all business activities beyond broadcast revenues (for example, including broadband and telephony revenues as a communications provider)															
17. Which European Union countries do you generate revenue from?	The Sky Group companies principally generate revenue in the UK, ROI, Spain, Italy, Germany, Austria.															
21. Do you agree with the proposed approach of implementing the provisions pertaining to VSPs in the 2018 Directive through the regulatory	We support the notion that the Government’s approach to online harms is much broader than the VSP provisions in AVMSD, and therefore it is right that the provisions are implemented through the Online Harms Bill.															

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framework outlined in the Online Harms White Paper?	<p>The benefit of the Online Harms Bill is that it can take a comprehensive and holistic approach. Accordingly, we believe that Commercial Communications relating to VSPs should ultimately be incorporated in the Government's broader thinking about regulating online platforms.</p> <p>We do however acknowledge that Government will need to take interim steps to ensure implementation of AVMSD if the necessary legislation is not passed in time to meet the implementation deadline.</p> <p>Given the VSP measures in AVMSD only aim to address a small subset of the issues identified by UK Government in the Online Harms White Paper, it will be important that these measures are only interim and should be updated as soon as practicable.</p>
22. If not, please explain why you deem this approach to be deficient and what alternative approach you would advocate.	<p>Whilst we will respond to DCMS's more recent consultation on VSPs, it is worth noting here that any measures put in place in the meantime, should only be temporary as the AVMSD requirements are only a small subset of the ambitions as articulated in the wider Online Harms framework.</p> <p>There are various features of the AVMSD VSP regime which fall short of the Government's ambitions to make the UK the safest place to be online. Most notably, the fact that it is a Country of Origin regime. Given that the largest VSPs will all be regulated by another EU Member State, it does not provide the UK Government or any UK regulator with the ability to make the largest VSPs accountable for their actions in relation to UK users. Furthermore, the content in scope of AVMSD is far more limited, and is not sufficient to deal with the array of harms identified in the Government's White Paper.</p>
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?	Yes
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.	It is unlikely that many VSPs would fall under the UK jurisdiction, which is a significant gap in the ability to protect UK consumers and citizens.
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	The government should not look to gold-plate the requirements of the AVMSD and should strictly limit any new requirements to overlays or modifications for commercial purposes.



Question	Response
consent of those providers, overlaid for commercial purposes or modified?	<p>There are a number of core platform functionalities that require overlays on a service such as Sky Q. These include, but are not limited to subtitles, warning messages, reminders, billing messages and now, next and later notifications.</p> <p>This platform functionality should not fall into scope of any new requirements.</p> <p>Whilst it is important that broadcasters and ODPs are protected from third-parties such as Smart TV manufacturers overlaying their own advertisements on top of programmes, these are often already covered by commercial agreements.</p> <p>Sky would seek commercial agreement with all third party broadcasters on its Sky Q service before any commercial overlays would happen.</p> <p>The government should not seek to create a new regulatory locus for television platforms, which would introduce new regulatory burdens where there is no evidence of consumer detriment.</p>
18. Do you expect the new provision, set out in Article 7b, will generate any impact on your media service?	<p>Yes</p> <p>If the Article is implemented in a way that constrains the development of User Interfaces or requires platform operators to seek permission to use operational and non-advertising overlays then it could impact Sky's media services.</p> <p>Recommendation and personalisation services are important parts of television platforms and should not fall into scope of any new regulation. This could constrain innovation on how television platforms function.</p>
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 fulfil the obligations of promoting the development of media literacy skills set out in Article 33a(1)?	None identified
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?	<p>Yes</p> <p>As a platform operator, this would help Sky better manage the third-party channels we provide access to on our platform.</p>
19. Do you expect such a requirement would generate any impact on your media service?	No

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20. What economic impact would new/amended provisions made by the 2018 Directive have on your business? How would the provisions lead to such impact?	Sky takes its compliance responsibilities seriously and would expect to fully understand the legal and regulatory implications of any and all changes to the regulatory framework in which it operates. Sky would ensure that its relevant staff received appropriate training on any changes required. It is difficult to say how much time this would take or the extent of such training until the specific changes are known, however, given the nature of Sky's business, operating at multiple levels of the sector, including as broadcaster, content provider, platform and retailer, Sky would expect the time taken for such familiarisation and training to be material.
21. How would your business familiarise itself with the implications of these changes? Would you use in-house legal support, seek external legal advice or neither?	
22. How much time (in hours) would it take for you/your staff/trade mark owners to familiarise yourself with the legal implications of the changes required by the Directive? How much would the use of staff time for this purpose cost your business?	
23. Are there any costs to you/your business beyond staff time? For example, preparation of guidance or amending existing licence agreements. Please outline what costs these are, and the financial cost to your business.	