



AVMS Consultation Team
Department for Digital, Culture, Media and Sport
100 Parliament Street
London
SW1 2BQ

22 August 2019

Audiovisual Media Services: Consultation

The Motion Picture Association (MPA) welcomes the opportunity to share its views on the UK Government's proposed approach to the implementation of the Audiovisual Media Services Directive EU 2018/1808 (the "2018 Directive"), which updates Directive 2010/13/EU (the "2010 Directive").

The MPA is the voice of the film and television industry, a global community of storytellers and innovators driving growth and employment at the heart of the creative industries.

Our members are Walt Disney Studios Motion Pictures, Netflix Studios, LLC, Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Universal City Studios LLC, and Warner Bros. Entertainment Inc.

Current state of the UK audio-visual sector

1. Members of the MPA are fully integrated into, and form a key part of, the UK's audio-visual (AV) sector. That sector is booming, which in light of the political uncertainty surrounding Brexit and the challenges it poses for UK-licensed broadcasters is testament to the attractiveness of the UK as a destination for film and TV production.
2. One major factor in that success is the UK regulatory climate. Current UK regulation of AV services takes an effective and proportionate approach to the protection of consumers while fostering genuine market-led competition. This competition encourages the development of real consumer choice, allowing our global community of storytellers to create a diverse range of AV content for UK and international audiences to enjoy.

Implementing the 2018 Directive

3. The regulatory framework that has helped to first establish, then sustain the growth of the film and TV industry in the UK is functioning well and should be maintained in its current form to the greatest extent possible. It should only be amended or added to by Government where new obligations are introduced by the 2018 Directive that cannot be fulfilled by provisions in existing UK regulation. *This paragraph constitutes the MPA's response to implementation questions 18-20.*

4. We have the following additional comments on specific issues:
- a. **Promotion of European works on video on-demand (VOD) services:** Ofcom data¹ indicates that the majority of UK-based VOD services already meet the 2018 Directive's new obligations relating to catalogue share². In light of this data, we would encourage the UK to approach this new requirement with the same non-prescriptive, market-guided regulatory approach that has been effective in ensuring that VOD services promote European works under the 2010 Directive.
 - b. **Prominence on VOD services:** Regulators have considerable flexibility³ to determine the most appropriate way to comply with this new obligation. In doing so, they should take into account the range of emerging business models in the complex and rapidly evolving on-demand space. Given the risks inherent in legal uncertainty and inappropriate regulatory intervention (dampening innovation, unfair market distortion and reduction of consumer choice), MPA supports an amendment to the Communications Act 2003 to ensure the production of further guidance from Ofcom on European works prominence on VOD services, in close consultation with industry. *This paragraph constitutes the MPA's response to implementation questions 13-16.*
 - c. **Obligatory exemptions to European works requirements:** Noting that Commission guidance is pending on calculation of low turnover and low audience, the MPA supports the necessary amendment to the Communications Act 2003 to bring UK law in to line with the 2018 Directive in respect of obligatory exemptions relating to new European works catalogue share and prominence obligations. *This paragraph constitutes the MPA's response to implementation questions 17.*
 - d. **Optional exemptions⁴:** MPA supports a UK regulatory approach that provides for the exclusion of thematic channels or services from obligations that would be unworkable for those types of VOD services. This could be achieved by reflecting the UK's current, sensible interpretation of "where practicable and by appropriate means", as it applies today to the exemption of thematic linear channels under Article 17 of the 2010 Directive, in new provisions for VOD services under the 2018 Directive. Fixing this exemption in UK law would provide welcome business and legal certainty.

Implementing the 2018 Directive: Video-sharing platforms

- 3.1 The measures proposed in the Government's Online Harms White Paper (the "White Paper") go beyond the baseline provisions laid out for video-sharing platforms (VSPs), as defined by the 2018 Directive. This is justified in light of the clear and urgent public policy need to tackle serious personal and social harms flowing from increasing amounts of user-generated content (UGC) not subject to the editorial controls that separate responsible, fully regulated media service providers from unregulated social media and video-sharing services⁵.
- 3.2 MPA therefore agrees with the proposed approach of implementing the provisions pertaining to VSPs in the 2018 Directive through the regulatory framework outlined in the White Paper as a first step in this process. *This paragraph constitutes the MPA's response to implementation question 21.*

¹ Audiovisual Media Service: Consultation Document (p.24, para. 64).

² The 2018 Directive, Article 13(1).

³ Please see the non-exhaustive, non-cumulative list of options in Recital 35 of the 2018 Directive.

⁴ ~~The 2018 Directive, Article 13(6), second sentence.~~

⁵ For further details please see MPA's response to the White Paper consultation of 1 July 2019.

3.3 Practical considerations relating to speed of establishment; the need for any interim regulator to have the requisite experience of the online space; the need to command the necessary authority across industry; and the need to inspire the right degree of public confidence to effectively fulfil the role all lead MPA members to agree with the appointment of Ofcom as the National Regulatory Authority for VSPs regulated under the 2018 Directive as an interim measure, if required. *This paragraph constitutes the MPA's response to implementation question 23.*

For further information regarding this consultation response, please contact Motion Picture Association representatives

Caroline D'Silva: caroline_dsilva@mpaconsultant.org

Nigel Warner: nigel_warner@mpaconsultant.org