

<b>Title:</b> Protecting DTT viewers who access Internet-Protocol TV (IPTV) content. <b>IA No:</b> <b>RPC Reference No:</b> <b>Lead department or agency:</b> DCMS <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 20/04/2016			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> Awaiting Scrutiny

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£0m	£0m	£0m	In scope	Qualifying provision

**What is the problem under consideration? Why is government intervention necessary?**

Ofcom has identified what it believes is a limitation in its ability to protect consumers from harmful, including potentially extremist or pornographic, UK television content under a very specific set of circumstances. This doubt applies where UK based 'portal' providers make available content that originates from outside of the EEA, via the Freeview platform (Digital Terrestrial TV (DTT) or digital TV platform, which replaced analogue TV), accessed through internet-connected televisions. This looks to the viewer as if it is a 'normal' Freeview TV channel, not internet content. Should harmful content be made available to UK consumers in this way, Ofcom would have no power to act in the protection of consumers.

**What are the policy objectives and the intended effects?**

As yet, no content has been provided from outside the EEA via the DTT; however, one of the two licensed 'portal' providers on the Freeview platform has indicated that they wish to do so, which would give rise to content being made available on UK television over which Ofcom does not believe it has regulatory powers. Clarifying Ofcom's power to act, should harmful content be made available via the DTT platform, will reduce the risk of UK consumers being exposed to said harmful content. This measure is proactive rather than reactive.

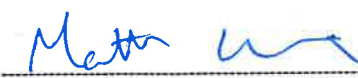
**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 1. Do Nothing

Option 2. The preferred option is to amend legislation to clarify that Ofcom has the power to take certain actions in respect of the UK-based licensed 'portal' providers, which enable viewers to access this internet-streamed content. For example, this broad power could enable Ofcom to restrict the type of content services that the licensed 'portal' provider could link to, or direct it to cease making available content services that include harmful content.

<b>Will the policy be reviewed?</b> It will be reviewed. If applicable, set review date: 07/2022				
Does implementation go beyond minimum EU requirements?			N/A	
Are any of these organisations in scope?			Micro <sup>Yes</sup>	Small <sup>Yes</sup> Medium <sup>Yes</sup> Large <sup>Yes</sup>
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded:	Non-traded:

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

**Signed by the responsible Minister:**  **Date:** 18/10/16

# Summary: Analysis & Evidence

# Policy Option 1

Description:

## FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

### Description and scale of key monetised costs by 'main affected groups'

No costs have been monetised.

### Other key non-monetised costs by 'main affected groups'

There is a low risk of the firms in scope losing out on some revenue, if Ofcom directed them to cease providing their service to a specific third party customer. However, for this to occur, two specific scenarios would have to occur, one of which is highly unlikely. Given the low risk and the difficulty in quantification, these potential costs have not been monetised.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

### Description and scale of key monetised benefits by 'main affected groups'

No benefits have been monetised.

### Other key non-monetised benefits by 'main affected groups'

There is a potential benefit to consumers who are better protected against the possibility of being exposed to harmful content delivered over the Freeview platform.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5

The key assumption is that the likelihood of both of the specific scenarios in which costs to business would occur actually happening is very low.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0	Benefits: 0	Net: 0	
			0

## Evidence Base

### Background

#### Broadcasting regulation

Broadcasting content (TV and radio) is regulated in the UK by Ofcom. The regulatory regime is derived from a number of different pieces of legislation that sit below the EU Audio-Visual Media Services Directive, which, amongst other things, sets minimum broadcast standards which must apply across European broadcasters.

In television, new technologies and platforms that have developed over time - i.e. the emergence of satellite and cable platforms and the move from analogue to digital terrestrial TV (DTT) - have been subject to different regulatory regimes. It is a criminal offence to broadcast certain services without an Ofcom licence.

Ofcom licensees are required to meet a number of licensing obligations including compliance with the Broadcasting Code. The Code sets out the standards which must be met by broadcasters in a number of areas, including protecting minors, crime, religion and harm and offence. Where broadcasters are found to have breached the Broadcasting Code Ofcom, as the communications regulator, has powers to apply and enforce sanctions.

#### Ofcom licensing regime

As noted, the different TV platforms have differing regulatory regimes leading to differences in the licenses each require:

- Satellite broadcasting requires a broadcaster to obtain a television licensable content service (TLCS) licence from Ofcom. The broadcaster then arranges for their content to be transmitted to a satellite via an uplink service. The satellite then re-transmits signals which are picked up by satellite dishes in people's homes. Sky is the largest provider of satellite services.
- Cable television is a closed, fixed-wire system under which signals are transmitted via cable wires directly to homes; this also requires broadcasters to obtain a TLCS licence. Virgin is the largest provider of cable services.
- Digital Terrestrial Television (DTT) is the broadcasting platform that replaced analogue television after the phased 'digital switchover' that took place between 2008 and 2012. Digital signals for DTT are bundled together and transmitted on a single frequency via a process known as multiplexing. Freeview is the sole provider of DTT services. There are two types of licences for DTT services:
  - A Digital Television Programme Service Licence (DTPS) licence which covers a service consisting of "normal" television channels (consisting of moving pictures), including their interactive enhancements.
  - A Digital Television Additional Service (DTAS) licence usually consists of self-standing text or data services, including teletext services and EPGs. This includes the application which provides access to IPTV. It is this type of licence that is affected.

### Problem Under Consideration

Ofcom has identified what it believes is a limitation in its ability to protect consumers from harmful, including potentially extremist or pornographic, content. This situation applies *only* to customers with internet-enabled TVs who receive TV services via Freeview, with Ofcom concerned that potentially harmful content may be available to viewers via the electronic programme guide (EPG) - the long list of channels available to view - without Ofcom having the power to act.

The issue has arisen in respect of the two current providers - Connect TV Limited (owned by Arqiva) and Synapse TV Limited - who provide access to content streamed on the internet via the DTT. These services are accessed like any other channel on the EPG, but then viewers are taken through a 'portal', through which they can access channels streamed from the internet by third-parties, with whom the 'portal' providers contract. Ofcom's concern is that viewers may view material accessed through their ordinary EPG, which would otherwise be prohibited or subject to certain rules if broadcast in a more traditional way, without realising that they are accessing internet-streamed content that is not regulated in the same way as television channels.

Ofcom has not seen this as problematic previously because, to date, these third-party channels have all either been licensed by Ofcom or another EEA regulator subject to the Audio Visual Media Services Directive (AVMSD), meaning regulatory action could be taken if infringing content was made available. However, one of the current 'portal' providers has informed Ofcom that they wish to provide access to channels from outside of the European Economic Area (EEA). It is also possible that future licensees may also wish to provide access to these channels. Ofcom's view is that they do not have the power to impose licence conditions on these 'portal' providers about matters falling outside the licensed service.

## **Rationale for Intervention**

It is long established policy that linear TV broadcasting should be regulated in order to protect viewers from harmful content and that the regulatory framework - implemented through Ofcom's licensing regime - should apply to all content broadcast in this way.

The changing business model of the two IPTV 'portal' providers, Connect TV and Synapse TV, which will see them contract with and provide access to content produced and made available outside of the EEA, has highlighted a limitation in the regulatory framework (i.e. because it does not enable Ofcom to impose conditions, for example, about the types of service which can be accessed via the licensed service). This limitation needs to be addressed in order to ensure that Ofcom can take steps to the extent possible to prevent potentially harmful content from being made available and that if harmful content is made available, Ofcom is able to act to get this removed.

## **Description of Chosen Options**

### Option 1. Do Nothing

This option would make no change to the current regulatory framework.

### Option 2. Amend primary legislation to give Ofcom the power to act in respect of the Ofcom licensed 'portal' providers that give access to the internet-streamed content via Freeview channels.

Government to introduce legislative amendments which clarify that Ofcom has the power to act in respect of the UK 'portal' services, licensed by Ofcom and available on the Freeview platform, which give access to the internet-streamed content. For example, this power could enable Ofcom to restrict the type of content services which the licensee could link to or direct its licensee to cease linking to content services which include harmful content.

This would be achieved by including amending provisions, most likely to the / Broadcasting Act 1996 in the Digital Economy Bill which is due to be introduced in summer 2016.

## **Monetised and non-monetised costs and benefits of each option (including administrative burden Impact**

### Scope of Impact

This regulation concerns the specific market where UK based 'portal' providers make internet-streamed television content, which they source from third-party firms, available to DTT viewers. These UK based 'portal' providers enable viewers to watch internet-streamed television content on the Freeview television platform. Where the 'portal' providers make available content that is also shown on other Ofcom licensed broadcast television services, or on television channels authorised by another EEA Member State, there is no impact as these content services will already be regulated. However, the proposed regulation will impact on the provision by the 'portal' providers of access to internet-streamed television content that originates outside the EEA as this content will not be subject to AVMSD or UK regulation, or indeed potentially any content regulation.

### State of the Market

There are only two UK 'portal' providers currently operating that would fall under the scope of the proposal and would therefore potentially face costs. The size of the market is due to the relative newness of the technology required to offer the service. The two firms are Arqiva, a large British transmission company that specialises mainly in providing communications infrastructure and is the network operator for the UK's terrestrial broadcast services (operating under Connect TV branding), and Synapse TV, a smaller firm which focusses entirely on this market.

All set-top boxes produced after 2012 have the capability to connect to the internet, but it is unclear how many of these boxes are currently in use. There may be the potential for the sector to expand, as new equipment sales increase the potential size of the market, as viewing habits move from traditional platforms to internet-streamed content, and as the cost of broadcasting over the internet falls in comparison to traditional methods. The expansion of the market is also currently limited by the intellectual property around the software needed to provide the service. Furthermore, older set-top boxes do not have this functionality, so in some homes existing equipment would have to be replaced to receive these services. However, given the infant nature of the market and the potential for technological change, it is impossible to make accurate predictions about the future state of this market.

### Potential Impact on Business

The proposed measure will only have an impact if harmful content were accessed via the DTT. Currently, based on the state of the market as it is now, this proposal would have no impact on any firm. This is because a) neither of the two firms currently offer their service to broadcasters outside the EEA, and b) the two 'portal' providers have stated to Ofcom that they would not knowingly offer their service to content producers likely to include harmful content. However, one provider has pointed out their limitation in determining if content would be considered harmful, as they do not view the content in advance of making it available and are not experienced in broadcasting compliance. On the other hand, the providers would likely carry out some due diligence on potential customers.

The only situation where there could be an impact is if an internet-streamed television content producer, based outside the EEA, contracted to supply content to the UK based Freeview 'portal' provider, *and* if that content producer were to stream harmful content. In that scenario, under these proposals, Ofcom would have the power to direct the UK based 'portal' provider (an Ofcom licensee) to cease making those content services available to DTT viewers.

If that situation arose, then the UK based 'portal' provider would lose the revenue gained from the non-EEA content provider, which would be a cost to business. The size of this revenue loss is uncertain because a) the

revenue the 'portal' provider receives from the content provider is determined by commercial negotiations (and has never been done before), and b) it is impossible to say what the chance of harmful, including extremist, content being streamed is. Particularly given the fact that the 'portal' providers have incentives not to engage with questionable content providers due to commercial and reputational risk, although noting that this could nonetheless occur due to varied, limited or absent content regulation in non-EEA territories.

However, some contextual information might help give an idea of the potential order of magnitude of any revenue loss.

### *Size of the Market*

Connect TV currently provides its 'portal' service to 27 channels via 19 slots on the EPG. Connect TV also provides access to 6 red button services.

Synapse TV currently provides its 'portal' service to 118 channels via 10 slots on the EPG. It is important to note that some content providers offer more than one channel via this approach, and so the number of content providers involved is less than the 27 and 118 channels noted above.

For context, there are around 170 EPG slots on the Freeview platform. Ofcom do not have any information on viewership figures for these channels.

### **Risks and Assumptions**

Government has identified the potential costs to business of this measure. For these costs to materialise, two specific scenarios would have to occur. We have estimated the chance of these scenarios occurring, and therefore the chance of the identified costs to business emerging, as very low. This is our main assumption and risk.

### **Direct costs and benefits to business calculations**

Due to the low risk of harmful content being made available, and thus any financial impact on firms, and given the uncertainty over the level of any financial impact (given commercial negotiation), we cannot give with any certainty an EANCB of this policy. This measure qualifies as **zero net cost**.