

<b>Title:</b> Video-on-Demand Regulation <b>IA No:</b> <b>RPC Reference No:</b> RPC-DCMS-5152(1) <b>Lead department or agency:</b> Department for Culture, Media & Sport <b>Other departments or agencies:</b> N/A	<b>Date:</b> November 2023
	<b>Stage:</b> Final
	<b>Source of Intervention:</b> Domestic
	<b>Type of Measure:</b> Primary legislation
	<b>Contact for enquiries:</b> enquiries@dcms.gov.uk
	<b>RPC Opinion:</b> Fit for purpose

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net Cost to Business per Year	Business Impact Target Status Qualifying provision
N/A	N/A	N/A	
<p><b>What is the problem under consideration? Why is government action or intervention necessary?</b></p> <p>The rapidly changing viewing habits of UK audiences and the accelerated growth in video-on-demand (VoD) services have highlighted the differences between the traditional audience protection available on linear television and the regulation of video-on-demand services. VoD services provide huge value to UK audiences, and in many cases provide significant, and growing, contributions to the UK economy. Viewers now have access to thousands of hours of on-demand programmes at the touch of a button across hundreds of different video-on-demand services, each of different scale and ambition and audience reach.</p> <p>However, these on-demand services are regulated far less robustly than traditional broadcast television, and some services that UK audiences use are not regulated in the UK at all. This creates risks to audiences and a lack of consistency across broadcasting regulation. On-demand services, other than BBC's iPlayer, are not subject to Ofcom's Broadcasting Code, which sets out appropriate standards for content including harmful or offensive material, due accuracy, fairness and privacy. This means that the TV-like content audiences watch is regulated differently depending on how they choose to watch.</p>			

**What are the policy objectives of the action or intervention and the intended effects?**

It is the Government's intention to introduce greater consistency in the regulation of traditional broadcasters and TV-like video-on-demand streaming services; to provide a fair competitive framework and ensure UK viewers receive equivalent standards when viewing television-like content. The overall objective is to protect audiences from the potential harm arising from the gaps in the existing regulatory framework which have been created by changes in the broadcasting landscape and the increasing popularity of video-on-demand for television-like content. For VoD services under enhanced regulation, this will mean higher standards for content through a new VoD Code which will include protections on harm and offence, privacy, fairness, due impartiality and due accuracy. Reforms will create more consistency in the rules for broadcasters and TV-like streaming services and will ensure UK audiences receive a similar level of protection no matter how they watch television - whether it be live or on-demand. The measures also aim to strengthen the UK's regulatory sovereignty by enabling Ofcom to regulate larger, TV-like, VoD services that target UK audiences not currently regulated in the UK.

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

**Option 0:** *Do nothing* - continuation of current regulation. VoD services based in the UK would continue under existing minimal rules which mean that material which would be unsuitable for children is not easily available, along with material that does not contain incitement to violence or hate speech. VoD services outside the UK would continue to be unregulated for UK citizens.

**Option 1:** (*preferred*) Bring TV-like VoD regulation closer in line with linear broadcasters, including introducing a new VoD Code to strengthen content rules, but not mandate specific audience protection measures.

**Option 2:** Bring TV-like VoD regulation closer in line with linear broadcasters, including introducing a new VoD Code to strengthen content rules, and mandate the use of specific audience protection measures.

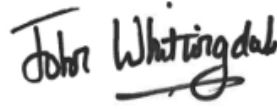
With Option 1 and Option 2, a two-tiered framework will be used to ensure proportionality, with larger TV-like services falling into Tier 1 and coming under new levelling obligations, and smaller, lower risk non-TV like services remaining under existing rules which protect audiences against some of the more serious forms of harm. Option 1 is preferred as, following the responses to the 2021 consultation, the Government deems the mandation of specific audience protection measures disproportionate. In addition, it is the Government's view that alternatives to regulation and voluntary solutions are unlikely to deliver stronger protections or provide a fairer regulatory playing field (as this is partly the model they are under now), which is unacceptable in the context of changing audience trends and the current imbalance in regulation for broadcast television versus TV-like VoD services.

**Will the policy be reviewed?** Regulatory changes will be reviewed by Ofcom during and post implementation. As an independent regulator, Ofcom will undertake its own comprehensive monitoring and evaluation (subject to parliamentary oversight).

Does implementation go beyond minimum EU requirements?	N/A
Is this measure likely to impact on international trade and investment?	No

Are any of these organisations in scope?	<b>Micro</b> No	<b>Small</b> No	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> N/A		<b>Non-traded:</b> N/A	

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***



Signed by the responsible:

.....

Date: 24/10/2023

## Summary: Analysis & Evidence

## Policy Option 1 (*Preferred*)

**Description:** (*preferred option*) Bring TV-like VoD closer in line with linear broadcasters, including introducing a new VoD Code to strengthen content rules, but not mandate specific audience protection measures.

### FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/A

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

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

Ofcom will have to familiarise themselves with new legislation, and will have to incur transitional, set up and ongoing costs associated with new Tier 1 VoD regulation and drafting, consulting and implementing the new VoD Code and guidance. Ofcom have not included the costs of any consultation or review which the Secretary of State may request Ofcom to undertake to determine the thresholds of capture for overseas VoD providers or larger domestic providers. All VoD services in scope of Tier 1 regulation will have to undergo the costs associated with familiarising themselves with the details of this legislation and new Ofcom rules, VoD Code and guidance.

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

Based on direct consultation with PSBs and commercial broadcasters based in the UK, it is estimated that regulatory change will not cause significant additional cost to UK broadcasters as they are already familiar with broadcasting regulation and all, or the overwhelming majority, of their VoD content is already consistent with the standards of the Broadcasting Code. However, for non-broadcast VoD services, it is possible that there would be substantial transitional and ongoing costs associated with their content having to comply with new Ofcom rules and VoD Code. It is envisaged that Ofcom will tailor the Code and guidance to VoD providers, allowing for more practical implementation for on-demand content and therefore mitigating the impact on services. However, these services will have to undergo a review of their catalogue of content, and put in place new/enhanced ongoing compliance processes, to ensure compliance with the new VoD code. Under this option, there will be no mandation of specific audience protection measures, but Ofcom will be able to direct changes to a service's measures if considered necessary, and this could bring additional costs if implemented. Ofcom are also expected to increase their fees that they levy on service providers.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
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<b>Low</b>	N/A		N/A	N/A
<b>High</b>	N/A		N/A	N/A
<b>Best Estimate</b>	N/A		N/A	N/A

**Description and scale of key monetised benefits by ‘main affected groups’**

N/A

**Other key non-monetised benefits by ‘main affected groups’**

There will be benefits to UK audiences because of the protections provided by the new VoD code alongside Ofcom’s new obligation to assess VoD services’ protection measures. For instance, these benefits relate to the new controls on harmful disinformation or dangerous health advice, or the mitigation of the risk that on-demand streaming services roll-back their audience protection measures in the future - which are particularly important in the context of rising VoD use. This legislation will future-proof VoD regulation to ensure that, although audience harm might be considered relatively low presently across most VoD services, audiences are protected if the volume of harmful content increases in the future, as more services arise, and the popularity of VoD content continues to increase. There will also be benefits to UK broadcasters competing against on-demand streaming services who currently have reduced costs to internal systems and in producing content.

**Key assumptions/sensitivities/risks (%)**

**Discount rate**

N/A

It is assumed that VoD services who are already compliant with the Broadcasting Code will also be automatically compliant with the new VoD Code, since this new code is likely to be similar to the Broadcasting Code in terms of content standards. It is also assumed that VoD services’ existing protection measures are generally acceptable to current Ofcom standards. Therefore it is assumed that any changes Ofcom enforce as a result of their new obligation to assess audience protection measures will be minimal at this stage. If this is not the case then the costs to services could be much larger than expected.

**BUSINESS ASSESSMENT (Option 1)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m: N/A</b>
<b>Costs: N/A</b>	<b>Benefits: N/A</b>	<b>Net: N/A</b>	

## Summary: Analysis & Evidence

## Policy Option 2

**Description:** Bring TV-like VoD regulation closer in line with linear broadcasters, including introducing a new VoD Code to strengthen content rules, and mandate the use of specific audience protection measures.

### FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/A

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

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

Ofcom will have to familiarise themselves with new legislation, and will have to incur transitional, set up and ongoing costs associated with Tier 1 VoD regulations and drafting, consulting and implementing the new VoD Code and guidance. All VoD services in scope of Tier 1 regulation will have to undergo the costs associated with familiarising themselves with the details of this legislation and new Ofcom rules, VoD Code and guidance.

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

Based on direct consultation with PSBs and commercial broadcasters based in the UK, it is estimated that, except for mandating specific audience protection measures, regulatory change will not cause significant additional cost to UK broadcasters, as they are already familiar with broadcasting regulation and all, or the overwhelming majority, of their VoD content is already consistent with the standards of the Broadcasting Code. However, for non-broadcast VoD services, it is possible that there would be substantial transitional and ongoing costs associated with their content having to comply with new Ofcom rules and VoD Code. These services will have to undergo a review of their catalogue of content, and put in place new/enhanced ongoing compliance processes, to ensure compliance with the new VoD code. This option would also likely bring significant one-off and ongoing costs to almost all VoD providers (including UK broadcasters) of ensuring their content is accompanied by new, mandated audience protection measures. Services have indicated that rolling out a mandated protection system would be considerably technically complex, potentially needing to build new tools, integrate new metadata into all their content, and require changes in the data and behaviour of their product in search, display and playback. They would also need to dedicate a large amount of human and technical resources to go through their library of content and apply new protection measures/classifications. Ofcom are also expected to increase their fees that they levy on service providers.

<b>BENEFITS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Benefit</b> (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A
<b>Description and scale of key monetised benefits by ‘main affected groups’</b> N/A				
<b>Other key non-monetised benefits by ‘main affected groups’</b> There will be benefits to UK audiences because of the protections provided by the new VoD code. For instance, these benefits relate to the new controls on harmful disinformation or dangerous health advice, or the mitigation of the risk that on-demand streaming services roll-back their audience protection measures in the future - which are particularly important in the context of rising VoD use. This option may also provide some benefit of consistency in audience protection measures across all services in scope. More broadly, this legislation will future-proof VoD regulation to ensure that, although audience harm might be considered relatively low presently across most VoD services, audiences are protected if the volume of harmful content increases in the future, as more services arise, and the popularity of VoD content continues to increase. There will also be benefits to UK broadcasters competing against on-demand streaming services who currently have reduced costs to internal systems and in producing content.				
<b>Key assumptions/sensitivities/risks</b>			<b>Discount rate (%)</b>	N/A
It is assumed that VoD services which are already compliant with the Broadcasting Code will also be automatically compliant with the new VoD Code, since this new code is likely to be similar to the Broadcasting Code in terms of content standards.				

#### BUSINESS ASSESSMENT (Option 2)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m: N/A</b>
<b>Costs: N/A</b>	<b>Benefits: N/A</b>	<b>Net: N/A</b>	

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# 1.0 Policy Rationale

## Policy background

1. The emergence of global content providers is driving fundamental shifts in viewing habits and industry structures. Whilst there is a high standard of rules in place to protect UK audiences watching broadcast TV, including the 9pm watershed and the Broadcasting Code, the same is not currently true of TV-like VoD - BBC iPlayer excepted as this is regulated under the Broadcasting Code. Most VoD services either aren't regulated to the same extent as traditional UK linear television channels, or they aren't regulated in the UK at all. This means that the TV-like content UK audiences watch is regulated differently depending on how they choose to watch it.
2. In addition, as viewing habits continue to change, the Government wants to ensure UK broadcasters continue to thrive in the new media landscape, so that they remain the driving force of our creative industries, fuel wider economic growth, and build on our international competitiveness. In order to do that, we need to ensure UK broadcasting regulation is fit for the 21st Century - and a key aspect of this is creating a level playing field between traditional broadcasters and on-demand streaming services.
3. The consultation on audience protection standards on video-on-demand services, published in August 2021<sup>1</sup>, sought feedback on a number of policy proposals designed to bring in line the regulation of traditional broadcasters and video-on-demand streaming services; to provide a fair competitive framework and ensure UK viewers receive equivalent standards. The Government published its response to the consultation in April 2022<sup>2</sup> and now intends to legislate to:
  - Ensure that larger TV-like VoD providers, which are not regulated in the UK and profit from UK audiences, will now come under Ofcom jurisdiction.
  - Give Ofcom powers to draft and enforce a new VoD Code designed for on-demand content, like the Broadcasting Code, to ensure TV-like content, no matter how you choose to watch it, will be subject to similar standards.
  - Aim enhanced regulation at larger, TV-like VoD, services to ensure smaller lower risk on-demand services are not unfairly affected. The Secretary of State will designate which services will be included in Tier 1 following a review from Ofcom.
  - Give Ofcom an enhanced ongoing duty to assess VoD providers audience protection measures, this will ensure individual VoD systems like age ratings, PIN codes, and warnings are fit for purpose.
4. UK audiences are increasingly consuming content through video-on-demand services. There are different terms used to describe different types of VoD services, often based on their main revenue model, though many services now access multiple revenue streams. For example Netflix, Now, and Amazon Prime Video are known as 'SVoDs' (subscription video-on-demand); and ITVX, Channel 4 and My5 are called 'AVoDs' (advertising video-on-demand). Broadcaster catch-up services such as BBC iPlayer are often called 'BVoDs' (broadcaster video-on-demand); and many services offer 'TVoD' (transaction video-on-demand) where audiences can purchase content on a pay-per-view basis. Ofcom also refers to VoD services

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<sup>1</sup> [Audience protection standards on video on demand services](#), August 2021

<sup>2</sup> [Government response to the consultation on audience protection standards on video-on-demand services](#). April 2022

using the legal term ODPS (On-Demand Programme Services). For simplicity, throughout this Impact Assessment, the term VoD will be used as a descriptive to capture all services within potential scope.

5. Analysis indicates that the majority of all households in the UK watch VoD monthly in one form or another<sup>3</sup>. Over the past five to ten years, audiences have increasingly seen VoD as a preferred way to watch TV and film, the number of households that subscribed to a VoD service rose almost 350% between 2014 and 2020<sup>4</sup>. Nearly half (48%) of UK adults consider online video services to be their main way of watching TV and film, and 42% of subscription VoD users can imagine not watching broadcast TV at all in five years' time<sup>5</sup>. In 2022, 67% of UK households say they have used at least one subscription VoD service.<sup>6</sup>
6. While both younger and older audiences are increasing their time spent on VoD services, this is particularly apparent with the rate at which young audiences are viewing content. Almost eight in ten children aged 5-15 (78%) watch some form of VoD content - nearly doubling from 44% in 2015<sup>7</sup>. Half of this age group do not watch live broadcast TV at all. In addition to this, the viewing of subscription VoD by young people and adults aged 16-34 has increased particularly steeply over the last few years, with average daily viewing minutes at 79 minutes<sup>8</sup>. The COVID-19 lockdowns also caused an uplift in subscription VoD use amongst older adults; almost a third (32%) of 55-64 year-olds used subscription services in the early lockdown period, up from 25% pre-lockdown, while 15% of over-64s used them (up from 12%)<sup>9</sup>.

### **Problem under consideration and rationale for intervention**

7. The rapidly changing viewing habits of UK audiences and the accelerated growth in VoD, as evidenced above, have highlighted the disparity that exists between the traditional audience protection available on linear television - such as freeview, satellite or cable - compared to TV-like VoD services. Services such as Netflix and Amazon Prime Video provide huge value to UK audiences, and in many cases significant, and growing, contributions to the UK economy. However, these services are regulated far less robustly than traditional broadcast television stations, particularly in relation to the regulation of content standards. As stated above, most VoD services either aren't regulated to the same extent as traditional UK linear television channels, or they aren't regulated in the UK at all. Many VoD services based outside the UK, and therefore not regulated by Ofcom and to a UK level of standards, are increasingly providing unregulated content to UK audiences. Not all VoD services provide TV-like content or are widely accessible/promoted to UK TV audiences, and therefore it is essential to ensure regulatory changes are proportionate and targeted to balance freedom of expression against enhanced protections for harmful content.
8. Though there are some rules that VoD providers must currently follow in protecting children from harmful content (though limited in comparison to broadcasting regulation), there are little or no rules to protect audiences over 18. Existing EU-derived UK rules for VoD do not provide Ofcom with the power to regulate wider content matters, for example considering harmful

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<sup>3</sup> Ampere analysis: The UK VoD Market; Current & Future Developments

<sup>4</sup> Ofcom Media Nations 2021

<sup>5</sup> Ofcom Media Nations 2020

<sup>6</sup> [Ofcom, Media Nations 2022](#)

<sup>7</sup> Ofcom: Children and parents; Media use and attitudes report 2022

<sup>8</sup> Ofcom Media Nations 2022

<sup>9</sup> Ofcom Media Nations 2020

misinformation. The overwhelming majority of content currently available from UK VoDs would not be considered as harmful. But there are increasing concerns over some content, for example over VoD programming which promotes factually incorrect health solutions and pseudoscience documentaries without any warnings. This potentially exposes audiences to the negative externalities of VoD services, primarily in the form of audiences being exposed to harmful content.

9. All major VoD services provide viewer content information/warnings, and voluntary parental guidance locks with pin controls for parents concerned to avoid their children having access to content that would be shown post-watershed on linear services. Whilst there is a good deal of conformity across PSBs' VoD services, audience protection measures implemented by other major VoD services are less consistent, though do not necessarily provide less protection. In addition, Ofcom are not required to assess the prevalence of these, and the audience protection they provide, meaning that appropriate oversight is not achieved.
10. The risk of harm to audiences is particularly important given changing viewer behaviours explained above, with 2021 Ofcom data showing that children now spend more time watching streamed content than traditional broadcasters. Four to 15-year-olds watched videos on streaming sites for 11 hours a week, compared with under seven hours of broadcast TV.
11. There is concern, including amongst parents, about the levels of audience protection and types of content provided on VoD services. Although Ofcom research finds that many are comfortable with having fewer rules on catch-up services compared to TV because they felt they had an active choice in selecting content and were therefore more in control on these platforms, their research also shows that audiences do not generally understand that all TV-like services are not regulated equally and they 'mistakenly expect their level of protection to be similar across broadcast and VoD'.<sup>10</sup> In addition, British Board of Film Classification (BBFC) research shows that there is consumer appetite for greater audience protection on VoD services, including through ensuring that all VoD services are regulated to provide similar standards of audience protection, and that age ratings shown on content reflect the UK's sensitivities and values.<sup>11</sup> Responses received from charities and researchers to the Government consultation highlighted the dangers of exposure to harmful content, particularly amongst younger audiences.
12. The consultation on audience protection standards on video-on-demand services, published in August 2021<sup>12</sup>, sought feedback on a number of policy proposals designed to level the playing field between traditional broadcasters and video-on-demand streaming services; to provide a fair competitive framework and ensure UK viewers receive equivalent standards. In addition DCMS undertook a period of stakeholder engagement to improve understanding of the issues surrounding the VoD, and wider broadcasting market.
13. The counterfactual section provides a detailed description of the current extent of regulation, as well as a summary of existing VoD services' compliance with the broadcasting code, and use of audience protection measures.

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<sup>10</sup> [Audience expectations in a digital world](#), April 2020

<sup>11</sup> [Age ratings on subscription streaming services](#), April 2021

<sup>12</sup> [Audience protection standards on video on demand services](#), August 2021

## Description of options considered

14. During the 2021 consultation, DCMS consulted on a wide variety of potential policy changes that could be made to better protect audiences from the potential harm arising from the gaps in the existing regulatory framework which have been created by the increasing popularity of TV-like video-on-demand. These included:
- whether and how Ofcom should regulate non-UK based VoD services
  - whether content regulation of TV-like VoD services should be strengthened in line with the existing Broadcasting Code
  - whether current warnings and parental controls are adequate; including PIN codes and BBFC classifications
  - changes to Ofcom's enforcement and sanctioning powers
  - licensing conditions such as complaints handling and improving diversity
  - consideration of the costs and benefits to regulation
15. The main areas that were considered through early stage long list option development were the type of regulation, the scope of regulation and the geographical reach of regulation.
16. Type: Whether or not to model VoD regulation on a broadcast linear licensing system, rather than the existing VoD notification system. This would include whether to bring VoD services under similar licensing obligations and under enhanced content regulation through a VoD Code. A second issue concerned whether to mandate specific audience protection measures or to provide Ofcom with an enhanced obligation to assess VoD providers audience protections.
17. Scope: A key consideration is the regulatory perimeter associated with the new regulations. The objective is to introduce enhanced regulation on appropriate TV-like and potentially harmful VoD services and it is therefore important to impose obligations on the right type of media and platforms. It is essential not to create barriers to entry, to reduce competition, or to encourage providers and services to seek to evade the regulatory perimeter.
18. Geographic reach: Another area relates to the global reach, and transnational operating model, of most of the media and tech organisations that will be in scope of this regulation. Extending broadcast-style regulation to all large VoDs currently serving UK consumers would include seeking to regulate large companies with limited legal presence in the UK. This creates complexity around the potential enforceability of measures (if there is no UK entity to regulate/sanction), as well as wider challenges around international trade and reaction from other jurisdictions.
19. Policy and analytical work following the consultation focused on three decisions informing the eventual options list, different combinations of which form an exhaustive list of sub-options that have been considered at the long list stage.
- a. Should TV-like VoD services not currently regulated by Ofcom that target UK audiences be brought within UK jurisdiction?
  - b. Whether VoD services should be regulated under broadcasting style regulation or not, and what elements of a new VoD Code should apply?
  - c. Should audience protection measures (e.g. age ratings, pin codes, warnings, categorisation) be mandatory/consistent, and should BBFC age ratings be mandated?

20. With regards to point a), following the 2021 consultation, there was general support for the proposal to bring larger TV-like VoD services which target UK audiences within UK jurisdiction on the grounds that content should be regulated like linear TV if it was viewed in the same way as linear TV. Of the responses received from organisations, around three quarters supported this proposal. From members of the public, there was an even split between those agreeing and disagreeing. Therefore, the option to not bring larger TV-like VoD services outside the UK, that target UK audiences, into UK jurisdiction has not been taken forward to the intervention options listed below.

21. The two key elements concerning VoD regulation that should be appraised as short list options in this IA are:

- a. Broadcasting Code: The Broadcasting Code (and guidance) in its current form is designed with live, rather than on-demand programmes, in mind. The majority of responses to the consultation were in favour of some aspects of the Broadcasting Code being applied in future VoD regulation, but were cautious about any wholesale application of the Broadcasting Code to VoD. Therefore, at the long list stage, there is the option whether or not VoD services should be regulated under a video-on-demand Code developed by Ofcom with the same objectives as the Broadcasting Code but adapted to the nature of VoD services. The exact details of the new video-on-demand Code will be determined by Ofcom, but in simple terms, this is likely to be similar to the Broadcasting Code excluding rules on live television, 9pm watershed, radio, advertising and product placement.
- b. Additional audience protection measures: Legislation could require on-demand services to set additional measures on their platforms which further protect audiences, these could include PIN codes, warnings, categorisation (BBFC age ratings). As above, many larger VoDs have already made voluntary efforts in this area. The consultation sought views on the form that these audience protection measures should take, including whether BBFC age ratings for content should be made mandatory.

22. With regards to (b) audience protection measures, of the clear yes/no answers over half agreed that current protections were adequate. Of those who said yes, the majority were broadcasters and VoD providers (who in general pointed to the success and innovation of their current tools). From those who answered no, many of these were organisations that have specific interests or expertise in enhancing audience protection measures or were charities/lobby groups who have specific concerns over harmful content. On whether there should be increased conformity of protection tools to provide more consistency for UK audiences, answers were more evenly split. Of those who said yes, many of the reasons given were for consistency for the viewer and understanding of the level of protection they can expect, with consistency in implementation valued in its own right. More detailed analysis can be found in the [consultation response](#) published in April 2022<sup>13</sup>.

23. Following the consultation, there are two ways in which this might be addressed in the legislation

- a. Specific audience protection measures (PIN codes, age ratings, guidance etc) should not be mandated, but Ofcom should be given an enhanced obligation to

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<sup>13</sup> Government response to the consultation on audience protection standards on video-on-demand services, April 2021

assess VoD providers protections for all audiences (ie. not just children) in line with the new VoD Code.

- b. Audience protection measures (PIN codes, age ratings, guidance etc) should be mandated

24. For age ratings, there is the potential to go further and mandate the specific use of BBFC age ratings. This will be assessed in the mandate option. There is also the potential that age ratings are mandated across all content provided by in scope services.

25. To ensure proportionality, a 2-tier system for enhanced regulation will be set, with the top tier (Tier 1) including larger, TV-like and potentially high risk services which will be in scope of enhanced regulation. Smaller lower risk VoD and non-TV like services will continue under existing rules, with the same Ofcom oversight and enforcement powers. Ofcom will be directed to provide information on which services could be designated for Tier 1 regulation before the Secretary of State makes the designation. Therefore there is no current certainty around which services will be regulated in Tier 1 at this time.

26. Therefore, the short list of options that will be carried through to appraisal are:

27. **Option 0:** *Do nothing* - continuation of the current rules in place

- Do not bring larger non-UK based VoD services within UK jurisdiction.
- Do not bring VoD services in line with Broadcasting regulation
- Do not regulate VoD services under a new Video-on-demand Code. Ofcom will not be directed to set, review and revise a Code for Tier 1 VoD services with similar objectives as the Broadcasting Code.
- Do not make any changes to existing rules or Ofcom assessment obligations for video-on-demand audience protection measures.

28. Ofcom currently regulates all programming on UK VoD services and this would continue under the do nothing option. This includes TV catch-up, online film services and those providing a library of archive content. There are specific criteria for determining whether a service falls within regulation and is therefore required to notify Ofcom and comply with their rules. Unlike linear TV regulation, where Ofcom sets standards through their Broadcasting Code, Ofcom must secure compliance by VoD providers who are legally obliged to comply with requirements set out in legislation, including that material which would be unsuitable for children is not easily available, and that material does not contain incitement to violence or hate speech.

29. **Option 1:** (*preferred*) Bring VoD services under a new Video-on-demand Code to strengthen content rules, BUT do not mandate specific audience protection measures.

- Bring larger, TV-like VoD services outside the UK which target UK audiences under UK jurisdiction
- Implement a two-tiered system and bring in enhanced regulation for Tier 1 (larger and potentially harmful services - both UK and non-UK based), specifically:
  - Level the playing field and bring Tier 1 VoD under similar obligations as broadcast linear regulation.
  - Regulate Tier 1 VoD services under the new Video-on-demand Code, with proportionate and practical implementation led by Ofcom which is described in the summary of the preferred option below.

- Do not mandate specific protection measures, but give Ofcom an enhanced obligation to assess VoD providers' protections for audiences.

30. **Option 2:** Bring VoD services under a new Video-on-demand Code to strengthen content rules, and mandate the use of specific audience protection measures.

- Bring larger, TV-like VoD services outside the UK which target UK audiences under UK jurisdiction
- Implement a two-tiered system and bring in enhanced regulation for Tier 1 (large services and potentially harmful - both UK and non-UK based), specifically:
  - Level the playing field and bring Tier 1 VoD under similar obligations as broadcast linear regulation.
  - Regulate Tier 1 VoD services under the new video-on-demand Code.
  - Mandate the use of specific audience protection measures.

31. *Evidence of consideration of alternatives to regulation:* We have considered whether some of these areas are partly deliverable through self-regulatory models through consultation and further engagement with stakeholders. However, following consultation, our view is that voluntary solutions are unlikely to deliver stronger protections or a consistent approach (as this is the model they are effectively under now), which is unacceptable in the context of the risk of increasing audience harm following changing audience trends and the current imbalance in regulation for broadcast versus VoD content.

### **Policy objective**

32. The overall objective is to level the regulatory playing field and to protect audiences from the potential harm arising from the gaps in the existing regulatory framework which have been created by changes in the broadcasting landscape and the increasing popularity of video-on-demand. For VoD services that provide a TV-like experience or provide potentially harmful content, this will include using the higher standards for content similar to the Broadcasting Code which has protections on harm and offence, privacy, fairness, impartiality and accuracy. Reforms aim to create consistency in the rules for broadcasters and TV-like streaming services and would ensure UK audiences receive a similar level of protection no matter how they watch television - whether it be live or on demand. The measures also aim to strengthen the UK's regulatory sovereignty by enabling Ofcom to regulate larger, TV-like, VoD services that target UK audiences not currently regulated in the UK.

### **Summary and preferred option with description of implementation plan**

33. The preferred option has the following aims:

- To deliver a balanced/proportional approach - enhancing regulation on the bigger VoDs which can more easily conform to new standards.
- To ensure freedom of expression - smaller, less harmful, non TV-like VoD services in the UK who would not have the capacity to conform to new systems should continue under existing rules.
- To deliver UK sovereignty and ensure UK audiences are adequately protected - the largest non-UK TV-like VoD services that target UK audiences should be brought into UK jurisdiction.
- To level the playing field - larger VoD services should have the same obligations as broadcasters where possible, like effective handling of complaints.

- Ofcom will be directed to set a new Code for Tier 1 VoD services with similar objectives to the Broadcasting Code, including harm, due accuracy and due impartiality rules. Ofcom would consult on a new VoD Code, based on the same overarching principles as broadcasting, while excluding less compatible rules. This would enable Ofcom to effectively level regulation, but to attune the rules and guidance to VoD providers, allowing for more practical and effective implementation for on-demand content.
- To deliver proportionality, specific audience protection measures (PIN codes, BBFC age ratings, guidance etc) should not be made compulsory, but Ofcom should be given an enhanced obligation to assess VoD providers' audience protection systems.

34. A new Code and guidance would require Ofcom to re-consult, slowing implementation but ensuring a much smoother process. From legislation commencement it is estimated it could take from 1 to 2 years before a new Code could be in place, but, importantly, this means that familiarisation time for VoD providers could be shortened (due to Ofcom consultation), so overall practical implementation could be similar.

35. The costs to VoD providers, especially those with large libraries, could be reduced by lengthening the implementation period for compliance with the Code, or by VoD providers prioritising action on specific types of content first. This would allow a proportionate and practical implementation of the new Code led by Ofcom, rather than requiring services to carry out an immediate review of their catalogues to ensure compliance, which would likely lead to relatively larger costs. The costs associated with not allowing a proportionate implementation period are assessed under option 2.

36. Following commencement of legislation, the next steps of implementation will be for Ofcom who will then be required to consult on the detailed rules and guidance needed to enhance regulation for Tier 1 VoD services. Ofcom will also be tasked to consider the VoD market to provide evidence to the SoS to determine which VoD services should be in scope, before this is set in secondary legislation in due course.

### **Rationale and evidence to justify the level of analysis used in the IA**

37. This Impact Assessment aligns with Scenario 2 in the RPC's guidance on primary legislation<sup>14</sup>. DCMS has provided an indication of the likely scale of impacts but is unable to provide a robust assessment for validation due to the fact that some of the details of the scope policy will be set out by Ofcom following legislation. The majority of stakeholders were unable to give us specific, quantitative estimates of costs and benefits that arise from the implementation of regulatory change. This assessment is therefore largely qualitative, but also includes a number of indicative estimates, based on information from stakeholders, on the likely costs and benefits.

38. There is too much uncertainty over the impacts of the proposal to provide a meaningful EANDCB (Equivalent Annual Direct Net Cost to Business) figure for validation at this stage. This uncertainty is largely due to the fact that many details of the policy are to be set, or advised on, by Ofcom at a future date. This detail includes providing the SoS with evidence to support the SoS' decision on which services will fall into Tier 1 and be in scope of the enhanced regulation, what exactly will be set out in the new VoD code, and how Ofcom will use their obligation to assess audience protection measures. While it is not possible at this

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<sup>14</sup> [RPC case histories](#) – primary legislation IAs, August 2019



stage to provide a fully monetised appraisal of the policy or a verifiable assessment of the EANDCB, every effort is made to provide an indication of the likely scale of impact of the whole policy through presenting illustrative monetised costs, and comprehensive qualitative analysis.

39. This is based on substantial engagement with stakeholders. Consultation questions were drafted with the input of analysts and designed to elicit feedback and data on the range of costs and benefits across different options. Additional engagement with a range of VoD providers was subsequently conducted, in late 2021, in order to generate additional insights into a more specific set of options progressed after the consultation, and to further probe the evidence provided by organisations as part of their consultation response.
40. While timelines are dependent on external factors, for appraisal purposes, this IA uses a ten-year appraisal period running from 2023. Familiarisation costs are assumed to be incurred in the first year of the appraisal period with full compliance from 2024. All impacts are presented in 2019 prices and 2020 present value base year.

## **2.0 Costs and Benefits**

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

**Option 0:** *Do nothing* - continuation of the current rules in place

**Option 1:** (*preferred*) Bring VoD services under a new Video-on-demand Code, BUT do not mandate audience protection measures.

**Option 2:** Bring VoD services under a new Video-on-demand Code, and mandate the use of specific audience protection measures.

41. Full descriptions of the options are included in section 1.
42. Underpinning both Options 1 and 2 are the following measures designed to ensure proportionality - thus minimising impact on business, including smaller businesses such as niche VoD providers - and to accord with the feedback received from stakeholders from consultation.
43. Firstly, existing notification and regulatory systems will be predominantly used rather than developing a new licensing system. The consultation responses and separate stakeholder engagement found that industry predominantly prefers, and are already familiar with, the current notification framework. Ofcom advises that the current framework is efficient and to the best of their knowledge no VoD services have had concerns with the current framework or avoided regulation (at least for very long). Importantly the current notification system will minimise costs to industry and ensure delivery within the reduced legislative timeframe.
44. Secondly, a two tier system for enhanced regulation will be created, in which Tier 1 services are expected to be predominantly large, TV-like VoD services, and in which smaller VoD, lower risk and non-TV like services continue under existing rules. Tier 1' services will be in scope of the new VoD Code that Ofcom will be directed to develop, and non-UK services in this bracket will be brought into UK jurisdiction under Tier 1 regulation. Under both Options 1 and 2, Tier 1 VoD services would also have additional obligations in line with broadcasters regarding content regulation procedures and to ensure communications and complaints from viewers are handled appropriately.
45. Again, this measure ensures that regulation is proportionate and that impacts on smaller providers are minimised, noting the risk that media plurality could be adversely affected if smaller VoD providers were faced with new challenges. Indeed, during the consultation, a number of VoD providers raised the concern that smaller providers may have to close their services due to increased costs and that, due to smaller audience sizes and content being 'un-TV-like', the risk to audiences was smaller. Larger providers highlighted the importance of exemptions or different standards for smaller/niche services as it may be disproportionately disadvantageous for smaller VoD platforms to have to comply with certain regulations.
46. The parameters of capture will not be set by primary legislation. Whilst consultation responses suggested parameters that could be used to differentiate between the size and impact of services, importantly it did not provide evidence of where that level could be set. In addition,

data is also currently limited to support an evidence-based decision, for example there is no comprehensive industry standard measurement for VoD audiences. Deciding an appropriate level for enhanced regulation should also consider audience harm, with Ofcom evidence from broadcasting regulation decisions pointing to some harmful content being more likely to appear on niche providers catering for a select audience (religious extremism/conspiracy theorists etc) of which the Government has limited role. Instead, primary legislation will give DCMS Secretary of State the power to set which services fall into Tier 1, following a review from Ofcom, through secondary legislation. Further impact assessments will accompany any secondary legislation.

47. Importantly, VoD services in the lower tier will continue under existing regulation, which will ensure that serious cases of harm, like hate speech or criminal activity, should still be captured by Ofcom.

*Who is impacted?*

VoD services:

48. There are currently more than 280 notified ODPS providers currently regulated by Ofcom.<sup>15</sup> At this time, there is no way to accurately measure the majority of VoD services across the rest of the world or which audiences they target.
49. Broadcast video-on-demand services operated by PSBs are a key group, comprising BBC iPlayer, ITVX, Clic (S4C), Channel 4, My5 (Channel 5), STV Player. Channel 4 has the largest volume of content of all the PSB BVoD services – 14,515 hours in April 2022, compared to BBC iPlayer’s 14,491 hours. ITVX (6,318 hours) and My5 (5,005 hours) have less depth of programming available on-demand.<sup>16</sup> Taken together, all four TV broadcasters’ free-to-view on-demand assets total 40,329 hours – narrowly below the respective catalogues of Netflix and Amazon Prime Video (see Figure 1).
50. Of key subscription VoD services not currently regulated in the UK, Apple and Netflix stand out as the largest services that directly target UK audiences (Amazon and Disney are regulated in the UK, though this could change in the future, for example if they base themselves outside UK jurisdiction). Broadcasters Audience Research Board (BARB) data on the number of UK households subscribing to different subscription VoD services in Q1 2023 finds that there are 16.96m Netflix households, 12.9m Amazon Prime Video households, 7.14m Disney+ households, 2.03m NOW TV households and 1.91m Apple TV+ households.<sup>17</sup> In terms of library size, Netflix has 41,000 hours of content, Amazon Prime Video has 27,000 hours, NOW TV has 21,000 hours, Disney+ has 14,000, and Apple TV+ has 600 hours of content available to UK users.<sup>18</sup> This is shown in Figure 1, where the four largest VoD services are shown in red, and the four largest Broadcast VoD services are shown in blue.

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<sup>15</sup> Ofcom, [List of on-demand programme service \(ODPS\) providers currently regulated by Ofcom](#), October 2022

<sup>16</sup> Ofcom Media Nations 2022

<sup>17</sup> <https://www.barb.co.uk/news/q1-2023-establishment-survey-data/>

<sup>18</sup> [Ofcom, Media Nations 2022](#)

## Total content hours available by service, April 2022

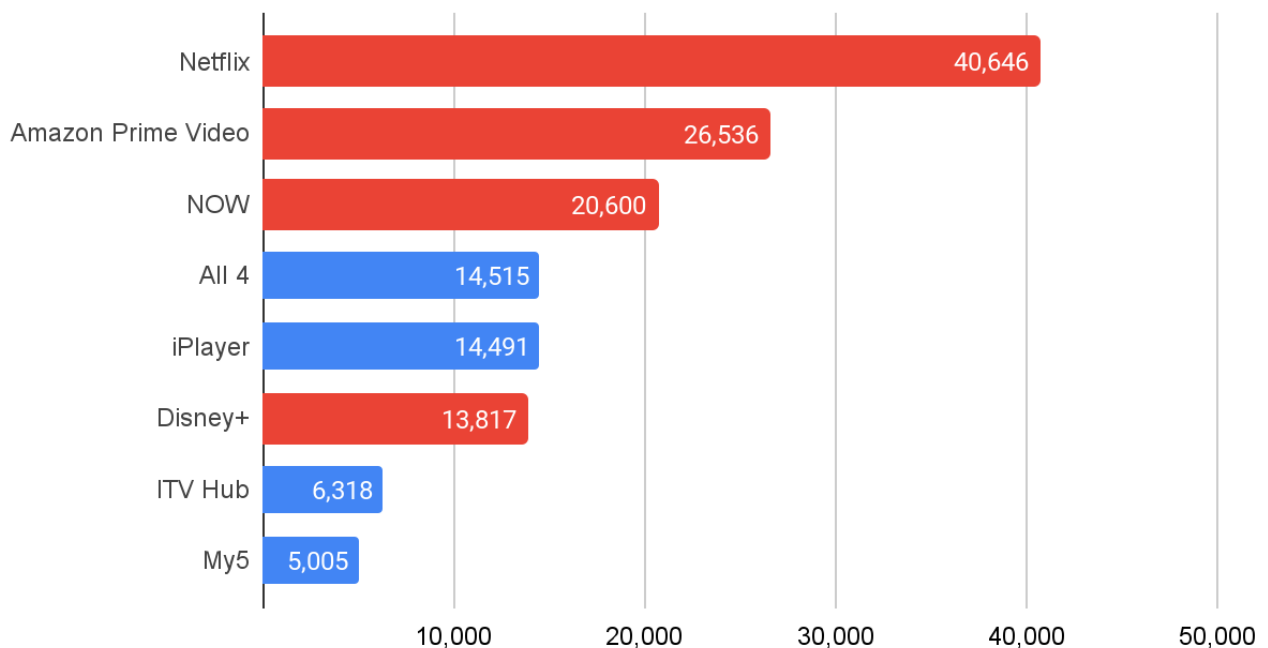


Figure 1: Total Content Hours Available by Service, April 2021. Ofcom data. Blue bars are BVoDs, red bars are SVoDs. Ofcom.

### Consumers:

51. The nature and level of protection that UK audiences are granted will be impacted by the changes proposed, including young people and children. Should the proposed changes lead to significant costs to VoD services, this could create knock-on impacts on the services available to consumers. This risk is mostly considered in the analysis of Option 2.

### Ofcom:

52. Ofcom will incur costs as a result of developing the new VoD code and associated guidance. Ofcom have provided early estimates of these costs, which are included later in the document. Ofcom note that the information and figures provided below are intended to be regarded as estimates only. Ofcom has not undertaken a comprehensive assessment of the required resources as the final scope of the new regulations and the extent of Ofcom's regulatory duties are still to be determined. In particular:

- Ofcom have not included the costs of any consultation or review which the Secretary of State may request Ofcom to undertake to determine the thresholds of capture for overseas VoD providers or larger domestic providers;
- The estimate for ongoing enforcement costs will depend upon the number of complaints received by Ofcom, and the effectiveness of compliance processes adopted by VoD providers, which cannot be predicted with any degree of certainty;
- The workload, and therefore the costs of ongoing enforcement will also depend upon the reach of the new VoD code and the number of providers which fall within the thresholds, neither of which have yet been confirmed;
- Since Ofcom's initial, early stage input, DCMS moved from a 'broadcaster first' to an 'Ofcom first' process for the public to make complaints and has created a more proactive

role for Ofcom in assessing audience protection measures. As discussed with Ofcom, these changes mean that Ofcom would need more resources and overheads to handle more initial complaints and duly take relevant ones through their full complaints process, as well as reviewing protection measures as appropriate.

- The estimates do not include any contingency (i.e. nil provision made for optimism bias).

## **Option 0 - Counterfactual/Do Nothing**

Continuation of the current rules in place:

- Do not bring non-UK based TV-like VoD services within UK jurisdiction.
- Do not bring VoD services in line with Broadcasting obligations
- Do not regulate VoD services under a new Video-on-demand Code. Ofcom will not be directed to set, review and revise a Code for top tier VoD services with similar objectives as the Broadcasting Code.
- Do not make any changes to existing rules or Ofcom assessment obligations for video-on-demand audience protection measures.

### How VoD services are currently regulated

53. Ofcom currently regulates all programming on UK VoD services. This includes TV catch-up, online film services and those providing a library of archive content. There are specific criteria for determining whether a service falls within regulation and is therefore required to notify Ofcom and comply with their rules. These criteria and the content standards requirements are set out in Section 4A of the Communications Act 2003.

54. Unlike linear TV regulation, where Ofcom sets standards through their Broadcasting Code, Ofcom must secure compliance by VoD providers who are legally obliged to comply with requirements set out in legislation, including that material which would be unsuitable for children is not easily available, and that material does not contain incitement to violence or hate speech.

55. Though there are some rules that VoD providers in the UK must currently follow in protecting children from harmful content (though limited in comparison to broadcasting regulation), there are little or no rules to protect audiences over 18. These existing EU-derived UK rules for VoD do not provide Ofcom with the power to regulate wider content matters, for example considering the accuracy of information. The majority of content currently available from UK VoDs would not be considered as harmful. But there are increasing concerns over some content, for example, VoD programming which promotes factually incorrect and dangerous health solutions and pseudoscience documentaries without any warnings.

56. With regards to audience protection measures (i.e. PIN codes, age ratings, warnings etc), there is no direct oversight or regulation, particularly for adult audiences. However, all major VoD services provide viewer content information/warnings, and voluntary parental guidance locks with pin controls for parents or guardians. Whilst there is a good deal of conformity across PSBs' VoD services, audience protection measures implemented by other major VoD services are less consistent, though not necessarily less effective. In addition, Ofcom are not required to objectively assess these, and the audience protection they provide, meaning that appropriate oversight is not achieved.

## Costs

### Monetised Costs

#### Transition Costs

57. There are no transitional, one-off costs associated with the do-nothing option.

#### On-going Costs

58. There are no monetisable costs of the do nothing option. The non monetised cost section will set out the current audience protection arrangements VoD services have, against which the costs and benefits of the intervention options will be compared.

### Non-monetised Costs

59. As set out above, it is considered that most VoD services currently offer an adequate level of audience protection across the majority of their content from existing regulatory requirements. Services also offer other voluntary audience protection measures that go beyond these requirements.

#### Broadcasting Code compliance

60. Broadcasters, including PSBs, from engagement through consultation, either stated that the entirety or the vast majority of the in-scope content on their VoD services was already compliant with the Broadcasting Code, and would therefore most likely be automatically compliant with any new VoD code. As a result, they already have well-developed compliance processes and resources. One PSB indicated that their compliance costs are approximately £1.2m per annum, covering the review of over 200 programmes a month, in addition to constantly reviewing historical content to ensure that it meets audience expectations. Another PSB indicated that they spend several millions of pounds each year in compliance activities, with an extensive content team who help to ensure that their content meets the Broadcasting Code.

61. Non-broadcasting VoD services that responded through the consultation indicated that their content is not automatically compliant with the Broadcasting Code and that they did not support proposals to apply some elements similar to the Broadcasting Code to their services. The significant costs that they stated such compliance would incur are considered in Option 1 and 2. However, it is important to note that these VoD services already have well-developed functions for reviewing content to ODPS and their own standards, elements of which could dovetail with enhanced regulation and transition to it.

#### Current state of audience protection measures

62. VoD services which engaged with the consultation generally stated that they already had strong audience protection measures in place that exceeded current regulation expectations. All major VoD services provide viewer content information/warnings, and voluntary parental guidance locks with pin controls.

63. There is a good deal of conformity across PSBs - a number use the 'G' system for guidance and parental controls, arguing that this system is well accepted and understood by audiences, and it allows them to make nuanced decisions about which content may be suitable for children. Furthermore, they generally provide password protected accounts and voluntary parental guidance lock controls. Commercial broadcaster VoD services offer similar protections, including PIN protection systems and content warnings. Some VoD services also attach age ratings to some or all of their content. For example, one respondent currently age-rates film content, but does not extend this to other types of content. VoD services use different systems to age-rate, including BBFC or a combination of systems.
64. The audience protection measures implemented by VoD services are generally not consistent in type or function, but normally provide strong and appropriate protection.<sup>19</sup>

### *Impact on audiences*

65. A large proportion of UK audiences now use a VoD service. According to Ofcom, 74% of households use a BVoD service, and 75% of households use an SVoD service, considerably more than the 42% of UK households that use free traditional TV.<sup>20</sup> The number of households that subscribed to a VoD service rose almost 350% between 2014 and 2020.<sup>21</sup> Nearly half (48%) of UK adults consider online video services to be their main way of watching TV and film, and 42% of subscription VoD users can imagine not watching broadcast TV at all in five years' time.<sup>22</sup> In 2022, 67% of UK households say they have used at least one subscription VoD service.<sup>23</sup> Ofcom data shows similar levels of engagement with the seven most watched BVoD and SVoD services in the UK (see Figure 2).

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<sup>19</sup> DCMS created some case studies for the RPC, which have been redacted from the published version due to commercial sensitivity.

<sup>20</sup> Ofcom's Technology Tracker (2021)

<sup>21</sup> Ofcom, Media Nations 2021

<sup>22</sup> Ofcom Media Nations 2020

<sup>23</sup> Ofcom, Media Nations 2022

## Online video service used in UK households to watch programmes or films, 2021

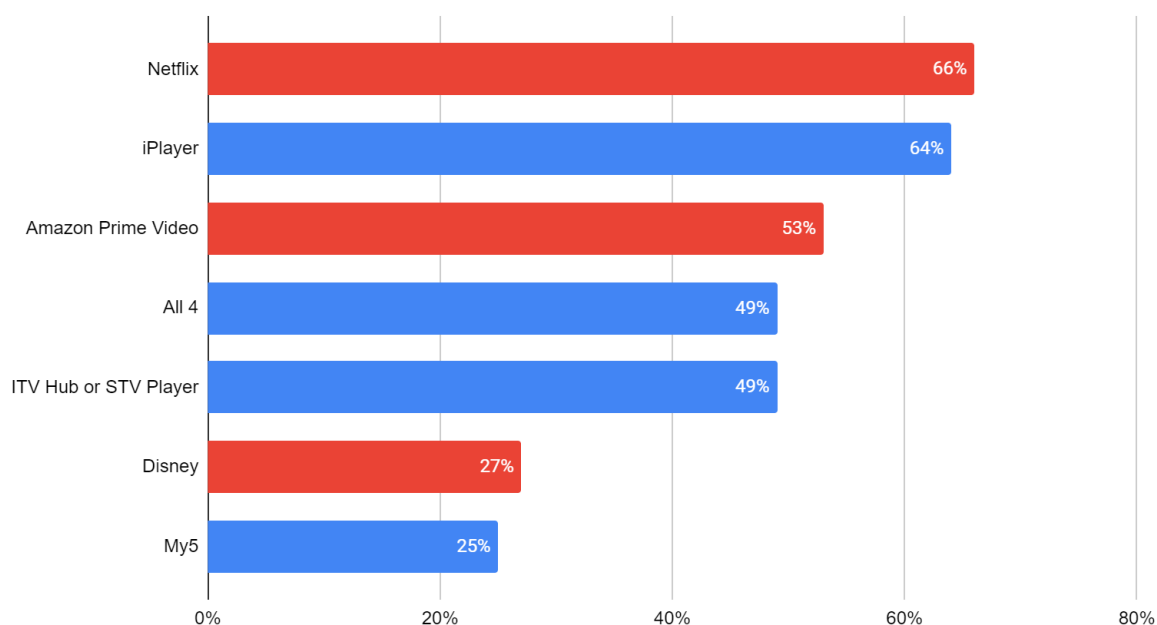


Figure 2: Online video service used in UK households to watch programmes or films, 2021. Blue bars are BVoDs, red bars are SVoDs. Ofcom.

66. Despite VoD services existing protection measures, there are still costs to UK consumers in terms of harms that currently arise, or risk arising in the future, under the current system, for example through inaccurate health advice causing costs to the health service. Whilst larger non-UK services, in the main, do not, in general, currently pose a high risk to audiences, as they have their own audience protection measures in place, rules are not entirely aligned and there is limited facility for UK audiences to raise complaints. In addition, smaller VoD services based outside of the UK which may not have the same levels of protection (though services based in the EU and accessible for UK audiences will be under some EU standards) can pose a risk of harm to UK consumers. For instance, Ofcom evidence from published broadcasting regulation decisions points to some harmful content being more likely to appear on niche providers catering for a select audience (religious extremism/conspiracy theorists etc). Moreover, submissions to the consultation pointed out that smaller/niche VoD services, due to their nature, may be more likely to publish risky or potentially harmful content. Identifying and regulating smaller services outside UK jurisdiction with limited or no UK viewership is currently impractical and disproportionate to the overarching objectives and therefore not included in either option.
67. As argued in consultation responses from broadcasters, it is reasonable for UK viewers to expect the same consistent standard of safety across the TV-like VoD services that they engage with, regardless of where the provider is based. In contrast, standards that non-UK VoD services are expected to meet can vary widely across jurisdictions and may be less robust than the UK rules governing VoD services - or less suited to UK cultural norms - leading to the risk of harm.
68. A system through which some services are subject to regulation and others are not can be confusing for audiences, in the context of existing lack of awareness of the detail of current regulation and some confusion about how this applies, particularly for catch-up, subscription



and video sharing sites.<sup>24</sup> Indeed, as stated in the 'Rationale for Intervention', Ofcom research shows that audiences do not generally understand that all TV-like services are not regulated equally and they 'mistakenly expect their level of protection to be similar across broadcast and VoD'. This means they are unlikely to be aware that when they watch factual news like content, for example, on VoD platforms, such content is not regulated for due accuracy in the same way as it is on linear TV. For instance, this leads to a risk of harmful disinformation when consuming documentary content from VoD services that consumers mistakenly believe to be regulated to a higher standard.

69. Whilst adequate audience protection measures are currently prevalent across the biggest VoD services, there are risks to harm if this changes in the future or as a result of inconsistencies or gaps in these offerings and insufficient Ofcom oversight. The benefits of removing this risk by empowering Ofcom with additional obligations is set out in Option 1.

## Benefits

### Monetised Benefits

70. There are no monetised benefits associated with the counterfactual option.

### Non Monetised Benefits

71. The current regulatory system provides important benefits through allowing flexibility, innovation and adaptation in the context of a diverse and differentiated set of VoD services operating in the UK. Numerous broadcasters and VoD services argued that the current system has allowed providers to innovate and implement the solutions that work best for their service and audiences. One PSB reflected that, within the Audiovisual Media Services Directive (AVMSD) and its 'country of origin' principle, and the European Convention on Transfrontier Television (ECTT), there is an amount of flexibility for audience protection based on de-minimis standards. A commercial broadcaster reflected on the benefits of the flexibility to generate their own age ratings and content warnings, in comparison to a mandated system such as the BBFC, which have enabled them to develop bespoke content warnings for diverse content and to attach granular age ratings that they feel improves audience protection. It was also noted that there is a possibility that the most appropriate tools for audience protection may change over time, which best suits a flexible regulatory framework. Importantly, broadcasters and VoD services argue that the current flexible system has led to robust and sufficient audience protection measures amongst the largest providers operating in, and targeting, the UK.

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<sup>24</sup> [Audience expectations in a digital world](#), Ipsos Mori for Ofcom, 2020

## **Option 1: (preferred)**

Bring VoD services under a new Video-on-demand Code to strengthen content standards, BUT do not mandate audience protection measures. A full description of the option is included in section 1.

### Impact Summary

72. VoD services are less robustly regulated than traditional broadcast channels in relation to the regulation of content standards, leading to potential harms to viewers now and in the future as VoD services continue to grow and the broadcasting landscape changes. This option will introduce new regulation to address these harms through improved Ofcom regulation. Ofcom estimates costs of £1.3m-£1.5m for set up, and £1.4m-£2m ongoing annual costs.
73. In doing so, this option will create costs to VoD services as a result of adhering to the future VoD code. Whilst direct transitional and ongoing costs to UK broadcasters will be minimal to zero given existing regulatory arrangements, more substantial costs may be incurred by non-broadcast VoD services considered as 'Tier 1'. A primary driver of these costs will be the review of content across their existing catalogue, and ongoing monitoring of new content.
74. As an illustrative estimate based on incomplete data, the total one-off cost could reach approximately £13m-£16m for major VoD services for which library size data is available, but may be reduced substantially by the way in which Ofcom choose to implement (e.g. providing a grace period to allow transition). It is likely that the majority of VoD services will not be impacted to this extent as VoD providers already have some systems in place which will reduce overall implementation costs. These costs remain small in the context of the larger streaming services' revenues. The knock-on impacts in terms of lost content are likely to be minimal insofar as broadcasters and streaming services have indicated they are confident that the overwhelming majority of their content would be fully compliant with the future code.
75. In providing an enhanced Ofcom obligation to assess VoD providers' protection for all audiences (i.e. not just children), this option is unlikely to create significant costs for VoD services. This is because large on-demand services operated by broadcasters and streaming services already provide extensive audience protections. However, the cost impact is uncertain as it is dependent on the way in which Ofcom takes forward their new obligation.
76. The costs associated with any non-compliance by VoD services with the enhanced regulation, when it is in force, are indirect and are out of scope of this impact assessment. Full compliance with the new rules is assumed, as is standard practice for regulatory impact assessments. Under the two-tier approach, it is expected that small or micro businesses will not fall in scope of this regime unless they contain harmful content, and will remain under existing rules. More detail is set out in the small and micro business assessment.
77. This option will deliver benefits to audiences by protecting them from harmful content, and from insufficient protection controls, which is particularly important in the context of rising VoD use. As there is no robust assessment of harm caused by the status quo, it is not possible to more accurately quantify or monetise the benefits resulting from this intervention. Given that many of the large services have strong audience controls and are confident that the majority of their current content would fall into line with the future VoD code, the benefits of this option are likely to be marginal in immediate terms. In protecting against risks, for instance in terms of changing audience expectations or reduced SVoD commitment to audience protection, the option does provide substantial benefits in the future.

## Main Risks

78. We assume that VoD services who are already compliant with the Broadcasting Code will also be largely compliant with the new VoD Code. If Ofcom's VoD Code was to deviate substantially from the Broadcast Code, or from broadcasters' expectations of the future code, further transition and on-going costs would be created. However, this is considered low risk at this stage as Ofcom will have the same overarching objectives and will have to go through a period of further consultation with providers.
79. We assume that the majority of SVoD content will be in line with Ofcom's VoD code, and therefore that the majority of the costs will be in reviewing, rather than removing, content. If the VoD code deviates from current SVoD expectations, this could lead to greater loss of content from libraries creating further costs.
80. Additional costs will be created if Ofcom uses its new powers to compel VoD services to improve or change their audience protection measures. As above, these costs are likely to be low as VoD services show an existing commitment to audience protection measures.

## Table of main costs

<b>Cost</b>	<b>Scale</b>
The costs to Ofcom associated with having to familiarise themselves with legislation, dealing with new VoD regulation and drafting, and consulting on implementing the new VoD code and guidance.	<p>The direct costs to Ofcom are £1.3m-£1.5m for set up, and £1.4m-£2m ongoing annual costs.</p> <p>Although the number of businesses that are to be in scope of this regime is yet unknown, as this will be set by the Secretary of State, an estimate has been used to approximate the fee per business. As detailed below, the additional fees to businesses, whilst a substantial increase on the existing ODPS fees, are not significant when put in context with the large revenues of the likely in-scope businesses</p> <p>Ofcom have not included the costs of any consultation or review which the Secretary of State may request Ofcom to undertake to determine the thresholds of capture for overseas VoD providers or larger domestic providers.</p> <p>The proposed regulatory framework moves to an 'Ofcom first' process for the public to make complaints and has created a more proactive role for Ofcom in assessing audience protection measures. These changes mean that Ofcom would need resource and overheads to handle more initial complaints and duly take relevant/qualifying ones through their full complaints process as well as reviewing protection measures as appropriate.</p>
Cost to VoD services of compliance with the new regulation and VoD Code	<p>The evidence suggests that direct transitional and ongoing costs to UK broadcasters will be minimal, or non-existent, as their content will already be consistent with this code.</p> <p>For non-broadcast VoD services expected to be caught within scope, direct transitional costs could be substantial as a full</p>

	<p>review of their catalogue of content will need to be undertaken. As an illustrative estimate based on incomplete data, the total one-off cost to a set of major SVoDs in the UK could reach approximately £13m- £16m. Under the preferred option, Ofcom will be expected to tailor the Code and guidance to VoD providers, allowing for more practical implementation for on-demand content thereby reducing costs.</p> <p>Ongoing costs to non-broadcast VoD services and non-UK based services will arise from having to ensure that any new content on their services is compliant with the new code. Exact quantification of the costs have not been possible, but the additional cost is not expected to be significant considering VoD services already have some compliance teams and processes, and when in context of their revenues.</p>
Costs to VoD services associated with Ofcom's obligation to assess audience protection measures	<p>The costs to VoD services are difficult to estimate as this is dependent on how Ofcom chooses to carry out this duty. However, under this option there will be no mandation of specific protection measures, and so it is expected that direct costs will be minimal as services generally already have adequate audience protection measures in place. One-off costs may arise if Ofcom directs changes to a service's protection measures.</p>

#### Table of main benefits

<b>Benefit</b>	<b>Scale</b>
Benefit to audiences from the new VoD Code, and the new Code governing harmful disinformation or dangerous health advice for example.	Audiences will be better protected from harmful content appearing on VoD services. Although it is considered that the prevalence of this harmful content is relatively low at present, this regulation will ensure protection into the future, when the amount of harmful content could increase. This is especially important in the context of rising VoD use, especially amongst younger audiences. Audiences will also benefit from the increased consistency in content standards that will now reflect audience TV expectations.
Benefit to audiences from Ofcom's obligation to assess audience protection measures, which ensures that appropriate measures will be in place and mitigates against the risk that VoD services roll-back their audience protection measures in the future.	As set out in the counterfactual, the majority of VoD services already have well-developed, nuanced audience protection measures in place. Therefore the immediate direct benefits to audiences from this new obligation are marginal. However, the obligation will future proof audience protection measures, ensuring that services will always provide sufficient and appropriate protections.
Benefit to UK broadcasters from levelling the regulatory playing field, which will enable them to better compete with subscription	Strengthening VoD regulation is likely to benefit UK broadcasters who currently compete on an uneven regulatory playing field. It will strengthen the ability for domestic services to compete with large overseas services as they will be under

VoD services.	similar obligations and rules for content regulation. Following implementation, larger VoD services will have more comparable costs, processes and restrictions on harmful content as UK broadcasters.
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## Costs

### Monetised Costs

81. As described earlier in the document, no EANDCB estimate has been produced for this assessment. However, where possible, monetisation has been used to indicate the potential scale of the impact associated with the two intervention options.

### Transition Costs

#### Familiarisation

82. All organisations involved will have to familiarise themselves with the details of this legislation, and ensuing Ofcom code and guidance. However, when engaging with stakeholders on these familiarisation costs, current uncertainty was highlighted given that the scale of the costs will depend on the nature of the new VoD code - and how far it diverges from the Broadcasting Code - and upon the precise nature of the additional powers Ofcom are given to assess audience protection measures. Alongside this, a number of organisations indicated that familiarisation costs could be minimal or suggested that these would simply be absorbed within existing teams without providing a cost estimate. However, to mitigate against optimism bias the following sector estimates are based on the larger and more detailed estimations of familiarisation costs that were provided by stakeholders. These calculations represent the best estimate of familiarisation costs based on the information currently available.

83. Firstly, staff in organisations' policy, regulatory, legal and editorial compliance teams will need to familiarise themselves with the new regime. Many organisations noted that the cost of familiarisation would therefore be dependent on the detail of Ofcom's new VoD Code and are currently difficult to estimate. We estimate that, for each organisation, on average, up to 40 FTEs<sup>25</sup>, including 13 legal professions, will need to familiarise themselves with the changes. This will also involve briefing senior management and implementing internal training for key staff.

84. It is expected that each of the 40 FTEs will dedicate no more than 5 hours each to the tasks.

- Each business is estimated to need 27 FTEs at an hourly wage of £20.81<sup>26</sup>, and 13 legal professions at a median hourly wage of £25.92<sup>27</sup>.

$$(5 \times 27 \times £20.81) + (5 \times 13 \times £25.92) = £4,494.15$$

<sup>25</sup> This is the highest estimate that was provided by stakeholders, and has been chosen here to guard against optimism bias.

<sup>26</sup> Annual Survey of Hours and Earnings, ONS. Average hourly wage of an individual in the Information and Communication SIC.

<sup>27</sup> Annual Survey of Hours and Earnings, ONS.

- An uplift of 22% is also applied to cover non-wage labour costs, as per RPC guidance<sup>28</sup>. Therefore the total familiarisation cost for businesses is:

Total cost per business = £4,494.15 x 1.22 = £5,482.86

85. Only Tier 1 VoD services will need to familiarise themselves with the new legislation, Tier 2 services will continue as normal. It is not known exactly how many services will fall into Tier 1 as this will be determined by the SoS following a review from Ofcom. For context, Ofcom identifies 26 services with >£50m annual revenues, and 9 services with between £10m & £50m revenues. They identify a further 35 companies that generate under £10m turnover. There is no evidence at this stage that smaller services currently provide content harmful enough to be considered for enhanced regulation.

86. Using companies with > £10m+ turnover as a proxy for the number of businesses in scope - noting that this is used for assessment purposes only and this is only one factor the SoS could consider - there are an estimated 35 businesses in scope, so the total one off familiarisation cost for business is £191,900<sup>29</sup>. The cost to the 3 public bodies<sup>30</sup> would need to be removed from the total cost to business for the purpose of the EANDCB, if this was being estimated.

Cost of compliance with the new VoD code:

#### *VoD Services*

87. Based on direct engagement with PSBs and commercial broadcasters based in the UK, it is estimated that the change in legislation (both in Option 1 and 2) will not cause significant additional cost as all, or the overwhelming majority, of their VoD content was originally consistent with the standards of the Broadcasting Code. Any Ofcom regulated live TV has to be consistent with the Broadcasting Code, and the majority of content on PSBs' VoD services have previously been on live, linear TV, and are therefore consistent with the code. Noting that older content might need to have some reassessment as consideration of what could cause harm or offence changes over time.

88. For example, all BBC content is required to comply with the BBC Editorial guidelines which, in many cases, go further than the Broadcasting Code. In addition, their video content, even if produced for their commercially operated services, is compliant with the editorial standards in the Broadcasting Code, and content is checked for compliance before it is uploaded to their on demand services. It is therefore anticipated there will not be any significant additional costs if it, along with other commercial broadcaster VoD services, was required to comply with a new code, provided that the standards were comparable to those in the Broadcasting Code. As a second example, another commercial broadcaster already has a dedicated compliance team in place that reviews their TV-like VoD content based on the Broadcasting Code and UK sensitivities. This was repeated across other broadcast submissions to the consultation and subsequent analytical engagement with them.

<sup>28</sup> [Implementation costs](#), August 2019, RPC.

<sup>29</sup> 35 x £5,482.86 = £191,900

<sup>30</sup> BBC, S4C and Channel 4

89. For non-broadcast VoD services, it is possible that there would be substantial transitional costs associated with their content having to comply with the new VoD Code, due to the fact that their content has generally not been broadcast on linear TV before, and that processes are not in place to ensure ongoing compliance with the Broadcasting Code. Ofcom will tailor the Code and guidance to VoD providers, allowing for more practical implementation for on-demand content and therefore limiting any significant impact on services. Costs to VoD providers, with large libraries of content, could be substantially reduced by introducing a grace period or lengthening the implementation period for compliance with the Code. However, at some point over this period, each non-broadcaster VoD service that falls in scope of the regime will likely carry out a review of their catalogue to ensure it is compliant with the new VoD Code, although VoD services may choose not to review certain genres or types of content that may be fairly assumed to pose no risk.
90. Some services stated that the volumes involved in viewing their entire catalogue mean this work would probably need to be outsourced, whilst others showed a preference to keep in-house. One service highlighted that it would expect a compliance cost of £150 per hour of content, based on the current cost of Ofcom compliance viewers. For illustrative purposes, a £150/hr cost of Ofcom compliance viewers applied to the total number of hours of content held by the major SVoDs in the UK for which data on library size is available would generate a one-off cost to business estimate of £13m- £16m<sup>31</sup>. This calculation is based on a single assumption of cost of compliance per content hour provided by a stakeholder, and is therefore considered insufficiently robust for inclusion in the EANDCB. We note this calculation may overestimate the cost of reviewing content given that Ofcom's compliance viewers are generally focused on conducting a detailed review following a complaint rather than reviewing existing content to check its compliance with guidelines. In addition, organisations may not conduct a review of every item of content in their libraries given that certain genres or types of content may be fairly assumed to pose no risk in relation to the future VoD code. Nonetheless, it is worth noting that costs generated as a result of this change would be mitigated under this option, where there is a lengthy grace period which will give services plenty of time to undertake this review.
91. The area where the broadcasters envisage that there could be incremental additional activity arising from the legislation would be in relation to that content on their VoD services in future that was not originally consistent with the Ofcom Broadcasting Code (and future content that meets that description). However, this is likely to be extremely minimal, because all broadcaster VoD services already have well-developed and well-resourced compliance teams and because only a very small proportion of content is likely to be inconsistent with the new VoD Code. The single PSB that raised this cost anticipated that this work would require the equivalent of one new FTE compliance person additional to the large compliance team they already have. Other broadcasters stated that there would be no additional compliance costs necessary. In addition, there would be no need for broadcasters to undergo any costs with setting up new compliance processes or teams, given their current arrangements, although this could change if the VoD Code significantly diverged from the Broadcasting Code.

Audience protection standards:

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<sup>31</sup> [Ofcom Media Nations, 2021](#). 2021 data shows that Netflix, Amazon Prime Video and Disney+ have 88,500 hours of content in their libraries. When accounting for smaller services such as Apple, Rakuten and Pluto this rises to 106,000. £150 x 88,500 = £13.275m, £150 x 106,000 = £15.900m.

## VoD Services

92. Due to the uncertainty surrounding how Ofcom's obligation will be exercised in Option 1, and the direct and indirect impacts this could have on VoD businesses, it is difficult to estimate the impact of this measure at this stage. As previously noted, all broadcast VoDs and the largest SVoDs have strong audience protection measures that are unlikely to be significantly affected in this option. However, Ofcom will have a power to direct changes if considered necessary. As a result there could be ad hoc one-off costs for individual businesses if Ofcom deem their audience protection measures to be inadequate. However, there is too much uncertainty to accurately monetise this impact. Option 2 will appraise the costs and benefits associated with a more maximalist approach of mandating the use of certain audience protection measures. These could provide an indication of the cost to an individual VoD service that could arise under this option, if Ofcom directed extensive changes to a services' audience protection measures.

## Ofcom Costs (transitional)

93. Ofcom have provided an estimate on the one-off start up costs arising from this legislation. These include the cost of having to write the new VoD Code and draft new guidance. Resource/FTE requirements and costs reflect an average based on the likely mix of Ofcom salary grades involved in each of the activities. Ofcom estimates that they will require staff costs, drawn mainly from policy development colleagues, but also economist, data, research/intelligence and corporate colleagues (finance, HR etc).
94. The information and figures provided below are intended to be regarded as estimates only, and do not include any contingency (i.e. nil provision made for optimism bias) for reasons more fully set out above.
95. Ofcom estimates total cost to be within £1,300,000 - £1,500,000, which includes staff costs and non-staff costs<sup>32</sup>.

## On-going Costs

96. Under all the intervention options, the costs will also occur to the larger, TV-like, services that are non-UK based but target UK audiences.

Cost of compliance with the new VoD code:

## SVoD services

97. The on-going costs to SVoD services resulting from their work to ensure that new content complies with the VoD code are primarily dependent on two factors: the hours of new content that the sector produces, and the estimated cost per hour of ensuring compliance. Whilst Ofcom data provides strong insight into the number of hours available from major SVoD services each year, and on how this has changed over time, there is no data source that provides a robust and cross-sectoral insight into the quantum of specifically *new* content produced annually. As a result of the differentiated approaches to audience protection set out

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<sup>32</sup> Non-staff costs include ICT and supporting infrastructure.



in the counterfactual, and as indicated through consultation responses and further engagement, VoD services are likely to take different approaches to compliance, engendering different costs. There was a very limited quantification of costs provided through consultation and further engagement. As a result, it is not possible to quantify on-going costs of compliance to a VoD code.

98. However, we are able to draw on insights from engagement to illustrate potential impacts. As stated above, one service highlighted that it would expect a compliance cost of £150 per hour of content, based on the current cost of Ofcom compliance viewers. The increase in size in the libraries of Amazon Prime Video, Netflix, and Disney+ between 2020 and 2021 can be used as a highly imperfect insight to estimate the number of new hours of content produced by SVoDs, whilst very likely being an underestimate due to exclusion of other SVoD services (many of which are recently established, and do not have historic Ofcom data on library size), and because there will be additional turnover in content which is not captured in the net growth estimate. The increase in the hours of content for these three providers was c2,100 hours, which would lead to costs of c. £315,000<sup>33</sup> to ensure this newly added content is compliant based upon the assumption of £150 per hour which, as considered above, is not a robust or fully tested assumption. In addition, one service indicated that there would be additional fees for production clearance costs borne by production companies to ensure each new production was compliant, although the cost per production is likely to be insignificant in context of overall production costs (this cost transfer would also be baked into any content/productions that plan, or would reasonably expect, to be broadcast on traditional/linear television).

#### Audience protection measures

##### *VoD services*

99. As set out in counterfactual, a sufficient level of protection is mostly achieved by VoD services. It is not expected that there will be many ongoing annual costs to these businesses as a result of the enhanced obligation for Ofcom to assess audience protection measures. As outlined above, there could be ad hoc costs depending on Ofcom exercising their duty.

100. However, as detailed below, Ofcom are likely to set higher fees as a result of their enhanced obligation to assess audience protection measures which will be proportional to the size of the VoD service. The estimated total additional cost to business arising from these higher fees is set out below.

##### *Ofcom Costs (ongoing)*

101. The range of estimated ongoing costs to Ofcom which from the annual enforcement of the new rules are set out below. Ofcom estimates total annual costs of enforcement to be within £1,400,000 - £2,000,000, which includes staff and non staff costs.

102. As a benchmark, the budgeted costs for carrying out their current ODPS (VOD) functions in 2020/2021 was £0.2m. Ofcom assumes that the workload required to assess complaints would increase six to eight times under the new regime, although the exact scope of the increase will depend on the scope of the rules, the number of services which would fall within

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<sup>33</sup> £150 x 2100 hours = £315,000. Library data from Ofcom Media Nations 2021

scope of the new framework and the impact of these factors on the number of complaints they receive.

Ofcom fees (which represent a cost to business)

103. Ofcom's fees principle centres on full recovery of their costs. Thus, the fees charged by Ofcom would be equal to the costs incurred in the administration of the new regime. As Ofcom will need to fully recover its costs, the first year of fees would be elevated to reflect the start-up costs incurred in setting up the new regime. To note, the estimated stakeholder fees set out below are based on the assumption that the breakdown of the current stakeholder structure remains the same as in 2020/21, i.e. the number of stakeholders, and the turnover brackets they are in remain constant. Ofcom is required to consult ODPS each year prior to fixing the amount of any fee it proposes to charge for the forthcoming financial year.<sup>34</sup>

104. The cost to administer the ODPS (On-Demand Programme Services) regime in 2020/21 was £0.2m. Under the revised framework Ofcom estimates that costs would be £1.3m-1.5m in the first year, which represents a 550-650% increase on £0.2m, so a very rough approximation of first year costs might be achieved by applying the same % to the different fee levels Ofcom currently charges. This suggests first year fees would be between £27,500-32,500 for stakeholders with £50m+ revenues, and £16,500-19,500 for businesses with revenue between £10m and £50m. Using the same method for Year 2 and onward costs, which Ofcom estimates will be between £1.4m-2m (600-900% increase on £0.2m), suggests that fees will be between £30,000-£45,000 for stakeholders with £50m+ revenues, and £18,000-27,000 for businesses with revenue between £10m and £50m. These fees have been estimated based on the projected percentage increase in Ofcom costs and have not been modelled on Ofcom's cost and fees allocation methodology in line with their Statement of Charging Principles as the future budget is not available.

105. Clearly, the increased marginal costs incurred by individual stakeholders would potentially be reduced subject to further services coming into scope of the VoD regime, including overseas services that are currently outside of jurisdiction.

Figure 3: Estimated fee structure under new regime

Turnover	Estimated no. of stakeholders	2021/22 Fee/stakeholder	Year 1 Fee/stakeholder	Year 2 onwards Fee/stakeholder
>£50m (full fees)	26	£5,000	£32,500-£37,500	£35,000-£50,000
Between £10m & £50m (half fees)	9	£3,000	£19,500-£22,500	£21,000-£30,000
<b>Total</b>	<b>35</b>			

106. The additional Ofcom fees represent an increased cost to business. These are the fees which are on top of the current fees that they would continue to pay under the do nothing option where this enhanced regulation is not brought in.

<sup>34</sup> Communications Act 2003 s.368NA(5)

107. For any new services that fall in scope of the regime, including overseas services, the additional costs would be the full cost of the new fee structure, depending on their turnover band. However, as mentioned above, the marginal fee to each individual business will fall to each additional new service that falls in scope. This is uncertain and is therefore not included in the estimation of business impact arising from additional Ofcom fees. Any change in fees is excluded from the EANDCB in impact assessments (statutory exclusion 24(4)(a)).

108. For 26 stakeholders, the additional cost could be £27,500 - £32,500<sup>35</sup> in the first year, and ongoing annual additional cost of £30,000 - £45,000.<sup>36</sup>

109. For 9 stakeholders, the additional cost could be £16,500 - £19,500<sup>37</sup> in the first year, and ongoing annual additional cost of £18,000 - £27,000.<sup>38</sup>

110. The aggregate impact is as follows:

*Figure 4: Estimated total additional cost to business arising from increased Ofcom fees in the first year:*

Low Estimate	High Estimate
$(26 \times \text{£}27.5\text{k}) + (9 \times \text{£}16.5\text{k}) = \text{£}863,500$	$(26 \times \text{£}32\text{k}) + (9 \times \text{£}19.5\text{k}) = \text{£}1,007,500$

*Figure 5: Estimated annual total additional cost to business arising from increased Ofcom fees from Year 2 onwards:<sup>39</sup>*

Low Estimate	High Estimate
$(26 \times \text{£}30\text{k}) + (9 \times \text{£}18\text{k}) = \text{£}942,500$	$(26 \times \text{£}45\text{k}) + (9 \times \text{£}27\text{k}) = \text{£}1,413,000$

## Non-monetised Costs

Cost of compliance with the new VoD Code:

### VoD Services

111. Stakeholder responses to our questions on the costs associated with the new changes assumed that a new VoD Code would align closely with the principles of the Broadcasting Code and that it would apply only to VoD content that is clearly TV-like in nature. This ensures that costs to services are minimised, because complying with a new code that included in its scope VoD content that was not clearly TV-like would increase costs for some services. It would likely require a time and resource intensive reassessment of their compliance processes and newly complying a considerable catalogue for non TV-like content.

<sup>35</sup> Low estimate would be £32.5k - £5k, high estimate £37.5k - £5k.

<sup>36</sup> Low estimate would be £35k - £5k, high estimate £50k - £5k.

<sup>37</sup> Low estimate would be £19.5k - £3k, high estimate £22.5k - £3k.

<sup>38</sup> Low estimate would be £21k - £3k, high estimate £30k - £3k.

<sup>39</sup> Carried forwards for the remainder of the 10 year appraisal period.

112. PSBs stated that this development was highly unlikely to result in the removal of any content from their library, though it is conceivable that some edits might be required. The content PSBs provide is highly unlikely to be impacted by this proposal. The same is true for other VoD services, who are generally confident that the overwhelming majority of their content would be fully compliant with any Code. This is because these large services already adhere to ODPS and internal standards, and that the VoD code will be sufficiently adapted to the nature of on-demand services to reduce impact (e.g. removing the 9pm watershed which does appear in the Broadcasting Code). It is most likely that the intervention option will induce behavioural change in SVoDs, specifically in terms of changes to the types of content that SVoD consider for inclusion, to align with the new code and minimise negative impacts. However, the complexity of interpreting how certain aspects of the Code might apply could result in editing or removing a number of titles from the service to minimise their potential exposure to risk. This could in theory, reduce the number of titles available to consumers in the UK.

#### Audience protection standards

##### *VoD services*

113. It is possible that costs from audience protection measures would disproportionately impact companies that offer services in numerous markets. The cost of their services may increase in order to cover the cost of regulatory compliance, as considered further in para 141. This risks undermining competition and plurality in the UK market. However, the costs and risks to VoD services stemming from Option 1 are likely to be minimal. Option 2 considers the potential knock-on costs set out above in more depth.

##### *Consumers*

114. Option 1 is unlikely to lead to costs to consumers. Option 2 considers the potential costs to consumers that arise from less flexible measures.

## **Benefits**

### **Monetised Benefits**

115. There are no monetised benefits arising from this legislation. It is not possible to monetise the benefits associated with increased audience protection from harm.

### **Non Monetised Benefits**

116. As set out in the rationale for intervention, there will be benefits to audiences because of the protections provided by the new VoD code alongside their new obligations to assess VoD services' protection measures. As covered in the counterfactual, it is clear that there are already strong protections in place amongst the largest broadcaster and streaming services in scope, so this intervention could provide marginal benefits. For instance, these benefits relate to the new controls on potential disinformation through documentaries, or the mitigation of the risk that streaming services roll-back their audience protection measures in the future - which are particularly important in the context of rising VoD use, especially amongst younger audiences. This legislation will future-proof VoD regulation to ensure that, although audience

harm might be low presently, audiences are protected if the volume of harmful content increases in the future, as more services arise, and the popularity of VoD content continues to soar.

117. These benefits can be realised through a flexible intervention. Whilst BBFC research demonstrates public interest for consistency of ratings across VoD services, cinemas and DVDs, their evidence base for direct harm was largely anecdotal, such as citing parents' complaints. There were some examples provided in which VoD services' international age ratings had given different, mostly lower, ratings than the BBFC for the same content, however more disparate examples had been quickly remedied by VoDs and there was no evidence that demonstrated any direct harm had incurred as a result of this inconsistency. Furthermore, the flexible approach in Option 1 enables the preservation of the benefits set out in Option 1 that accrue to large streaming services and their audiences as a result of the differentiated, innovative and granular approaches that they are currently able to take.

## **Option 2**

Bring VoD services under a new Video-on-demand Code to strengthen content standards, and mandate the use of specific audience protection measures. A full description of the option is included in section 1.

### **Impact Summary**

118. The impacts of this option are identical to Option 1, except for two areas.

119. Firstly, in how audience protection measures will be governed. By mandating the use of specific measures, for instance BBFC age ratings, this option will create greater costs for VoD services, both BVoD and SVoD. This could reach hundreds of thousands of pounds to millions per service, but would depend entirely on the form. Given that there is no specific evidence which suggests the varied approaches to protections provided by VoD services is creating audience harm, it is considered that this additional cost would not necessarily lead to an increase in benefits stated in Option 1. Indeed, this could risk harm if inappropriate measures (or measures that offer less protection than the current measures offered on that service) are mandated. It could also create increased regulatory costs to Ofcom, and thus higher fees to business. We have not provided an estimate of these costs but anticipate that this would be an increase on the costs provided in Option 1.

120. Secondly, this option would require an immediate implementation of the VoD Code (i.e. no grace period or delay for VoD service to comply with new rules) which will result in greater costs than the preferred option. This is due to potential scarcity in compliance viewers, and an ensuing increase in the price of their services following these supply/demand dynamics. An estimate of the increased cost has not been provided.

121. Under the two-tier approach, it is expected that small or micro businesses will not fall in scope of this regime unless they are identified as potentially providing harmful content, and will remain under existing rules. The consultation response has not provided evidence of smaller services that would be caught in scope of enhanced regulation at this stage. More detail is set out in the small and micro business assessment.

Table of main costs (where divergent from Option 1)

<b>Cost</b>	<b>Scale</b>
Increased Ofcom regulation cost compared to Option 1 as a result of mandated audience measures.	Increase in one-off and annual costs, and resultant fees to business.
Cost to VoD services of compliance with the new VoD code	Under this option, firms will have to undergo an immediate review of their libraries which will result in greater costs than the preferred option. This is due to potential scarcity in compliance viewers, and an ensuing increase in the price of their services following these supply/demand dynamics.
Costs to VoD services from having to implement specific audience protection measures which have been mandated.	There would be significant direct one-off and ongoing costs to almost all VoD providers (including UK broadcasters) of ensuring their content is accompanied by new, mandated audience protection measures (e.g. BBFC age ratings).

Table of main benefits (where divergent from Option 1)

<b>Benefits</b>	<b>Scale</b>
Potential benefit to some audiences from the mandation of specific, consistent audience protection measures.	Some evidence suggests that mandated, standardised protections included would have benefits for some audiences in terms of their ability to address current VoD approaches which could lead to audience confusion. However, there is no evidence pointing towards the specific harm induced by the non-standardised arrangements currently in place. The benefits delivered by this option are therefore not greater than Option 1.

## **Costs**

### **Monetised Costs**

#### Transition Costs

##### *Familiarisation*

122. For this second option, familiarisation costs are expected to be the same as for option 1, i.e. total one off cost to business of £191,900. There will be other transitional costs that will be greater than in option 1, as set out below.

Cost of compliance with the new VoD code:

#### *VoD services*

123. This option assumes an immediate review of VoD services' back catalogue would be needed as no proportionate implementation period would be allowed. For broadcasters, there would be no cost for reasons set out in Option 1 and the counterfactual. For non-broadcaster VoD services, stakeholders highlighted that there would be significant costs of wholesale review of content libraries. The cost of a full review of the back catalogue is set out in Option 1. Under option 2, this review will have to be immediate, and is therefore likely to be even more costly. Also, the costs are likely to be higher under option 2 because an immediate wholesale review of back catalogues by streaming services would lead to scarcity in compliance viewers, and potentially an increase in the price of their services following these supply/demand dynamics. This scarcity could further lead to delays in the review of full catalogues, with one estimating it could take longer than a year.
124. Other transition costs of setting up any new functions under the code would still apply, these would be the same as under option 1. They include the possibility that services may need to carry out extra compliance work which would require the equivalent of one new FTE compliance person, additional to the large compliance team they already have. However, as discussed above, this is likely to be negligible.

#### Audience protection measures

##### *VoD services*

125. The mandation of a consistent system of warnings or age ratings would present a significant one-off cost of updating a VoD provider's existing user interface and going through their library of content to comply with the new system. There would also be significant costs from having to implement ongoing new compliance processes and restructuring existing compliance teams. This would be the case for the vast majority of VoD services, both BVoDs and SVoDs. Services argue that this cost, which could be in the millions of pounds for the large services, is unjustified given that their more nuanced systems provide sufficient protection, and in some case even more protection than a specific age rating system such as that of the BBFC. A detailed breakdown of these costs, and indication of their potential scale, follows. However, the evidence received from stakeholders was mixed, and costs will vary significantly between companies because they would be working from different starting points with different existing protection measures (for example some VoD systems may already operate the chosen mandated system). Therefore, no industry-wide quantification of costs has been possible.
126. For the majority of VoD services, any mandation of specific audience protection measures that lead to significant revisions in the existing protection models within organisations would be considerably technically complex. Services would potentially need to build new tools, integrate new metadata into all their content, and require changes in the data and behaviour of their product in search, display and playback. Some services may not have the functionality or skills to implement any new systems. They may have to purchase rating systems, or commission the writing of new software. One PSB suggested that it would take 15-20 of their engineering teams up to 6 months each to implement technical changes to their VoD service. Another PSB

also stated that initial technical changes could take 6-8 months, and costs are estimated at £500,000.

127. In addition to the technical/design costs, services would need to dedicate a large amount of human, and technical, resources to go through their library of content and apply the new protection measures/classifications. Training would also be required, for example on the application of an age rating or warning and the process of inputting the age rating/warning into their systems. One PSB estimated that this exercise could take years to complete, and could result in financial costs in the millions of pounds. This diversion of resources onto development and implementation of a new system would create an opportunity cost in terms of what other key services and innovations VoDs would be able to offer to their audiences.

128. However, some evidence received through engagement suggested costs could be smaller. One PSB indicated that implementing the new system on existing content would take 2-3 people around 8 months to complete at a total cost of around £150,000, which is a considerably lower estimate, whilst another indicated costs of £112,500 - £150,000. A broadcaster stated that implementing parental controls and PIN capability could cost up to £100,000 - £200,000, with the provision of metadata for the titles to show trigger warnings / sensitive content descriptions costing a further c.£100,000 - £200,000. For relevant organisations, there would be the ongoing cost of applying the new system to new content, which is outlined in the next section.

#### *Ofcom Costs (transitional)*

129. The detailed cost estimates provided by Ofcom are set out under Option 1. However, under this option, it is likely that these costs would be increased, as there will be increased burden on Ofcom. This arises from tasks associated with regulating the mandate of specific audience protection measures - these tasks could include running a consultation, producing guidance and enforcement.

#### On-going Costs

Cost of compliance with the new VoD code:

#### *Vod Services*

130. As discussed above, consultation responses indicate the impact of bringing VoD services under the Broadcasting Code would have minimal impact on the Broadcaster VoD services, who are largely or entirely compliant with Code for all their audiovisual content. However, for other VoD services there could be significant transitional costs arising from having to review entire libraries to confirm that they are compliant with the Code, though actual changes in availability of content is likely to be minimal. The ongoing costs of complying with the broadcasting code are the same in this option as in option 1.

Audience protection measures

*VoD services*

*Cost to implement new system to new content*



131. The on-going costs to SVoD services resulting from their work to ensure that new content complies with any new audience protection measure that has been mandated are primarily dependent on two factors: the hours of new content that the sector produces, and the estimated cost per hour of ensuring compliance. As set out earlier in the document, whilst Ofcom data provides strong insight into the number of hours available from major SvoD services each year, and on how this has changed over time, there is no data source that provides a robust and cross-sectoral insight into the quantum of specifically *new* content produced annually. As a result of the differentiated approaches to audience protection set out in the counterfactual, and as indicated through consultation responses and further engagement, VoD services are likely to take different approaches to compliance, engendering different costs. There was a very limited quantification of costs provided through consultation and further engagement. As a result, it is not possible to quantify on-going costs of new audience protection measures.

132. Once the initial set up costs have been completed, one PSB anticipated having to employ an additional 2-3 compliance staff full time to review and apply age ratings to live content. The only alternative would be to label content with age ratings that are probably overcautious, thus creating confusion for the audience about what programming is actually suitable for different age groups. They estimated that the costs of these 2-3 full time staff would be at least £200,000 per annum. A smaller service estimated to need 1-2 additional members of staff on a full-time and permanent basis. Based on past recruitment, they anticipate a cost of £37,500-£75,000 per annum (on top of the one-off cost noted above).

#### Ofcom Costs

133. Ofcom have not provided costings for this more prescriptive option, however we estimate that the ongoing costs to Ofcom, and fees on business, will be higher in this scenario. Ofcom confirmed that their costs increase for any option that requires more active and constant monitoring, which would be the case under option 2.

### **Non-monetised Costs**

#### Compliance with the new VoD code

134. There are no additional costs to outline here, on top of the monetised costs above, and the non monetised costs considered in option 1 which are also relevant here.

#### Audience protection measures

#### *VoD Services*

135. During the 2021 consultation and further engagement with stakeholders, broadcasters were generally against the mandation of age classifications and prescriptive mechanics. Those against mandatory audience protections considered them ineffective and poorly aligned with current regulations for broadcast content for which age ratings and tools are not mandatory, although it is also worth noting their financial incentives to avoid any further, mandatory regulation. Overall, there was a sense across submissions that there should be some more conformity in the consistency of principles, but against the application of very specific tools that

may be at odds with their current offerings and lead to disproportionate costs without improving audience protection.

136. On whether age classifications/warnings systems (such as the age classification system operated by the BBFC) be mandatory responses were again evenly split. Of those who said yes, many spoke in favour of BBFC classifications specifically and came either from organisations directly supporting the BBFC's work, or as charities and lobby groups against specific harmful content. These in general suggested that the BBFC's age rating decisions and content advice are reflective of what the UK understands and expects and that the application of any other age classification system would lead to confusion - especially given the suggested value of a consistent, uniform system. Some lobby groups spoke in favour of consistent classifications and warning systems, but did not specifically mention the BBFC by name.
137. Of those who said no, the majority pointed to the cost and resource burden of applying BBFC classifications or indeed any standardised classification system and significant practical barriers to rolling out any mandatory ratings. Some submissions were strongly opposed to the BBFC, particularly questioning the effectiveness and restrictiveness of their ratings, the legitimacy of their research base, and the suitability of their application to forms of programming such as daytime and documentary shows.
138. Services have indicated that a costly and onerous system, set out in the monetised section above, could result in the reduction of innovation and investment. The opportunity cost associated with having to divert significant resources to designing and implementing new audience protection measures would be large. There is the potential knock on impact on the delivery of services for smaller VoDs with smaller content budgets, where significant additional costs could result in a reduction of the amount of content which they commission. For some small services, this cost could result in them shutting down. Services have indicated that higher subscription fees are likely as these costs are passed onto consumers. However, the VoD market is highly competitive and any rise in fees would potentially have a negative impact on any given service's subscriber base, and so it is possible that significant rises would not occur.
139. On BBFC age ratings specifically, from our engagement with VoD services, it is clear that for the vast majority of organisations, the cost of overhauling their existing system of classification and internal compliance mechanisms to introduce a BBFC process at this time would be excessive. This would include re-logging all existing content, re-training staff, retrofitting their entire compliance process, adapting systems, and paying for an ongoing licence to implement BBFC guidelines.
140. Services argue on the whole that all this investment would provide no additional audience protection for viewers. They argue that the BBFC age rating system is unsuitable for BVoD content in particular, and argue that their current systems would do a better job at protecting audiences. The nature of the impact on services are similar to those associated with having to bring in their own new system of protections, but mandating a specific age rating system increases the scale of these costs significantly. One PSB indicated that overall, the cost of implementing a BBFC age ratings, will at an absolute minimum cost over £1.5m, with other PSBs agreeing that these costs are likely to run into the millions.
141. Whilst there is recognition of the need for greater consistency within the VoD landscape, there is a potential risk to reducing viewer choice and innovation due to higher costs to enter

the VoD market, particularly if the adoption of specific age ratings is enforced. The Government is of the view that not much change is required at this time. The system currently works, however some guidance on a consistent approach (e.g. on content warnings, age classifications and PIN protection) might be beneficial so that VoD providers are working within the same framework.

### *Consumers*

142. Evidence provided by VoD services suggests that costs incurred as a result of Option 2 could reduce content choice, for instance through the number of titles available to UK subscribers. In the context of global launches, this could mean that UK viewers are not able to access and participate in the conversation around new content, with one service suggesting this could in turn lead to an increase in piracy. In addition, if costs are passed onto consumers, this will lead to higher subscription fees. However, due to the highly competitive nature of the VoD market, and the strong commercial outlook for the sector, we consider that costs incurred to streaming services would not have a major impact on the services provided to UK audiences. Also, price rises are considered as pass-through impacts for IA purposes, and are therefore indirect.

## **Benefits**

### **Monetised Benefits**

143. There are no monetised benefits arising from this legislation. It is not possible to monetise the benefits associated with increased audience protection from harm.

### **Non Monetised Benefits**

144. Some evidence suggests that mandated, standardised protections included in Option 2 would have important benefits for audiences in terms of their ability to address the current variegated system which can lead to audience confusion. However, as previously noted, there is no evidence pointing towards the specific harm induced by the non-standardised arrangements currently in place. In addition, there are strong benefits to the current system which would be lost under Option 2.

## **Summary**

### **Business Impact Target Calculations**

145. As set out in Section 1, it has not been possible to provide these calculations.

### **Sensitivity Analysis**

146. Due to the lack of monetised costs for the VoD service sector set out in this assessment, there has been limited scope or need to employ sensitivity analysis at this stage. The costs provided by Ofcom include detailed sensitivity analysis through ranges. Any impact assessments that follow will include detailed sensitivity analysis on the costs to business.

## Risks and assumptions

Assumption	Evidence	Risk
VoD services who are already compliant with Broadcasting Code will also be automatically compliant with new VoD code.	Ofcom's new VoD code is likely to be similar to the Broadcasting Code in terms of audience protection and overall rules and guidance.	Could be a larger cost to than expected if they receive complaints that any of the are not compliant, or if the costs increase significantly from the Broadcasting Code. This risk is mitigated in the preferred option because it is unlikely that services would not sufficiently adapt to VoD contexts.
VoD services' existing protection measures are generally acceptable and meet Ofcom standards	Evidence provided by the major services show well-developed protection measures.	In the analysis we assume that the changes that Ofcom will require are likely to be minimal and occur irregularly in the context of existing obligations. If this is not the case, the costs to services could be larger than expected. Costs are included in the preferred option as services will be able to implement protection measures of their own design.

## Unintended consequences

147. Increasing regulation needs to be proportional. Increases in costs to VoD services could have a detrimental impact on UK content choice, media plurality and investment in UK media and creative industries, or increase subscription/transaction charges. Similarly, as large SVoDs are global businesses, new regulation can lead to risks around decreased alignment of rules internationally, creating costs and knock-on impacts for these businesses that have to adapt products and services across multiple markets. However, given the substantial subscriber base located in the UK, and the growing role of the UK in SVoD production, there will be economic incentives to comply, and disincentives to stop or reduce services in this country. The preferred option is designed to protect against most potential unintended consequences and costs:

- The two-tiered design will prevent small services from going out of businesses which is possible if they had to comply with the new regulation.
- Costs to VoD providers, especially those with large libraries, could be substantially reduced by introducing a compliance delay or a grace period, as set out in the preferred option, lengthening the implementation period for compliance with the Code. This would allow a proportionate and practical implementation of the new code led by Ofcom, rather than requiring services to carry out an immediate review of their back catalogues to ensure compliance.
- Services will be free to implement their own audience protection measures, and not have to implement a mandated system which would be very costly. However, this lack of consistency may have the unintended consequence of continuing audience confusion as a

result of the diversity of systems implemented by VoD services. Ofcom's new duty to review audience protection measures should mitigate this and ensure future services do not decrease protections. As set out previously, there are important benefits to audience protection that stem from this diversity in approaches, allowing services to tailor their protection measures.

#### Steps to address evidence gaps

148. This uncertainty is largely due to the fact that a lot of the details of the policy are to be set or advised on by Ofcom at a future date. This detail includes reviewing the VoD market in advance on the SoS designating which services will be Tier 1 and be in scope of the enhanced regulation, what exactly will be set out in the new VoD Code, and how Ofcom will use their duty to assess audience protection measures.
149. As explained in section 1, the new framework itself will sit in primary legislation, setting out the overarching framework for enhanced regulation of VoD services. Ofcom, then will implement the regime, and will need to set out much of the detail on the rules and guidance, following consultation.
150. For this assessment, extensive engagement was undertaken with stakeholders in order to ascertain monetary estimates of impact. However, a lack of quantitative information was provided, largely due to uncertainty on the details of Ofcom's regime. Ofcom will be in the position to gather more specific, detailed, quantitative evidence from stakeholders as they will be able to directly consult on the details of the regime. They will therefore be in a better position to assess the impact. Ofcom's work will cover:
- Reviewing the VoD market in advance of SoS designation of VoD services into Tier 1;
  - What the new VoD code will contain;
  - How they will carry out their duty to assess audience protections.
151. A further impact assessment will be made for the SoS' decision on which services will be designated Tier 1 through secondary legislation. At this stage, it is likely that a more detailed quantitative assessment of the impacts of the regime will be able to be carried out, building on this largely qualitative assessment. It is likely that DCMS will undertake further rounds of stakeholder engagement at this point in order to gather the necessary information. DCMS will also work with Ofcom at this stage to gather evidence for any impact assessment, and will use the evidence that Ofcom would have already gathered following their market review. This will increase understanding and enable quantitative appraisal of the following key direct impacts:
- The costs to Ofcom and associated fees levied on businesses that are deemed to be in scope
  - The costs associated with compliance with the new VoD Code. At this stage, the details of this Code are likely to be clearer, which will allow a more accurate estimate of the associated costs, both transitional and ongoing.
  - The estimated number of businesses in scope, so that the costs to business in totality can be estimated.

## **3.0 Wider impacts**

### **Small and Micro Business Assessment**

152. The consultation and stakeholder engagement explored whether smaller providers should or could be able to conform to enhanced rules and standards. Whilst the argument could be made that all VoD should be regulated equally, engagement with the VoD industry (through direct engagement and consultation responses) and Ofcom, suggests that a large number of smaller VoD providers would find it difficult (if not impossible) to profitably adhere to broadcasting style rules under their current business models and therefore would be forced to shut down. Whilst responses were generalised there was overarching feedback that many smaller providers would have to close their services as a result of the increased costs arising from the regime changes, and that, due to smaller audience sizes and content being 'un-TV-like', the risk to audiences was smaller. However, Ofcom evidence from broadcasting regulation decisions points to some harmful content being more likely to appear on niche providers catering for a select audience (religious extremism/conspiracy theorists etc). Though Ofcom considers that the existing rules already cover some of the most dangerous content adequately (hate speech, terrorism, criminal activity etc).
153. Whilst consultation responses suggested parameters that could be used to differentiate between the size and impact of services that should be under enhanced regulation, importantly it did not provide evidence of where that level could be set. In addition, data is also currently limited to support an evidence based decision, for example there is no comprehensive industry standard measurement for VoD audiences. However, Ofcom has recently undertaken similar research to inform their recommendation to the Government on accessibility requirements on VoD services (i.e. around subtitles, sign language etc). This included a consideration of proportionality around significant technical or operational obstacles, exemptions on low audience size (fewer than 200,000 monthly unique viewers), and disproportionate cost (more than 1% of overall turnover).
154. With the risk of increased compliance costs for UK services being most acute for niche services, or nascent services seeking to establish themselves in the UK market, a two-tier approach will be implemented. A two-tier regulatory approach will not level smaller VoD services with broadcasters (who all have to adhere to Ofcom's Broadcasting Code), but it will be proportionate, and still level the playing field between the larger VoD providers that are in direct competition with UK broadcasters.
155. Under the two-tier approach, it is expected that small or micro businesses are unlikely to fall in scope of this regime unless they are deemed at risk of providing substantive harm to audiences, and will remain under existing rules.
156. Deciding an appropriate level for enhanced regulation must also consider audience harm, as well as proportionality, in which the Government has limited role. Considering this, Ofcom will review the market in preparation for enhanced regulation and report to the SoS. To reduce the burden on Ofcom, this will be on request from the SoS, rather than every specific number of years or left to Ofcom to determine.
157. The SoS will be given a power to designate Tier 1 providers, following a report from Ofcom, through secondary legislation. This would have the essential benefit of making the system

more adaptable and future proof, while also ensuring a clear separation of powers. Ofcom will be given increased powers to require information from providers (for example in relation to audience size) to fulfil this duty, as this information is not currently uniformly available.

### **A summary of the potential equality impacts**

158. The consultation response provided some evidence that moving to a VoD Code that had similar rules as a Broadcasting Code could provide a positive impact on individuals regarding protection from harmful content, including those with protected characteristics, who due to their characteristics could be at more risk of harm from some types of content, like harmful disinformation targeted at their characteristic. The consultation and stakeholder engagement provided no evidence of negative impacts on individuals with protected characteristics under the Equalities Act of the recommended proposals.

159. Ofcom will carry out their own Equality Impact Assessments before implementing further rules and guidance following the commencement of legislation.

### **A summary of the potential trade implications of measure**

160. The new regime will set enhanced requirements on all Tier 1 VoD services that wish to operate in/sell their product in the UK, and therefore there is a potential impact on trade.

161. This measure could have the potential to impact on the imports or exports of a specific good or service. Specifically, a small number of Tier 1 overseas VoD services will come in scope of the new VoD regulation regime. However, as set out in the bulk of this assessment, the impact of these rules on services is likely to be minimal. Through the consultation and direct engagement with stakeholders, DCMS asked what the potential wider impacts of the new regime could be for services. No VoD services that responded suggested that this new regime would impact their ability/willingness to trade in the UK. Some services suggested that Ofcom regulation would have positive brand impacts (i.e. perception of a safer service).

162. In theory, if the regime and Ofcom's new VoD Code is overly prescriptive or burdensome, then costs could be significant, which might result in higher product prices, or other implications that could lead to reduced trade. As set out above, we do not expect this to be the case. Therefore this regulation is not expected to have an impact on international trade and investment.

163. The new provisions for top-tier regulation will not introduce different requirements for domestic businesses compared to businesses from different foreign countries. The Tier 1 will be determined by measurements that could include size of UK audience or UK turnover - rather than location of business.

### **Innovation Test**

164. The new VoD regulatory regime has the potential to impact product innovation within VoD services in two ways. Firstly, the impact depends on the exact parameters of the new VoD code, and how costly this will be for services to comply with. As set out earlier in the document, for broadcasters, this is expected to have minimal cost impact, and therefore minimal knock on impact on services' profits and ability to invest and innovate. However for other services, the transition cost associated with a catalogue review, and the ongoing costs of

VoD code compliance could be significant, and could impact profits. However, during our consultation and direct engagement, no service clearly stated that these costs would be so significant as to impact innovation.

165. Secondly, the new Ofcom directive to assess services' audience protection measures is highly unlikely to impact services' ability to innovate. Under the preferred option, services will be allowed to continue to provide their individualised audience protection measures, as long as Ofcom deems them to be satisfactory. It is only under option 2, which is not being taken forward, that significant impacts on services' ability to innovate would occur. Here, mandation of specific audience protection measures would stifle innovation.

166. Evidence was only provided that mandating specific audience protection measures, like age ratings, could reduce innovation in future audience protection measures (as in unrecommended Option 2). For this reason, and the reasons outlined above, it is unlikely that the recommended option will have a significant impact on innovation. A full assessment of innovation impacts cannot be completed until Ofcom's guidance has been finalised.

### Justice Impact Test

167. This policy is not expected to have a significant additional impact on the justice system. All legal disputes will be handled by Ofcom. Ofcom already uses the court system to enforce regulatory penalties for VoD services, such as pursuing non-payment of a fine. It is possible that under this new regulatory regime they may have to use this more (if more VoD services are sanctioned under enhanced regulation, and more services results in a greater level of non-compliance with regulatory penalties), however as enhanced regulation would be limited to larger on-demand services, and many of those services already adhere to similar regulation, we consider this less likely (particularly as there would be a reputational impact of refusing sanctions). The majority of VoD services would be regulated the same as they are now and therefore there is not expected to be a change to the use of the justice system for those providers.

### Competition

168. Using the competition checklist set out in the Competition and Market Authority's (CMA) "competition assessment checklist" guidance<sup>40</sup>:

- a. *Will the measure directly or indirectly limit the number or range of suppliers?* This measure will not directly limit the number or range of suppliers. The impacts of the updated VoD regulation regime are unlikely to be large enough to indirectly lead to suppliers dropping out of the market, or block entrants to the market. During DCMS' engagement with stakeholders, no large firms provided evidence that these rules could result in them leaving the market. DCMS received feedback during consultation that these rules, if applied to small services, could result in business closures, however, with the two-tiered approach, these small firms are unlikely to come in scope of the new regime, and will therefore continue to operate as usual.
- b. *Will the measure limit the ability of suppliers to compete?* The new regime will be the same for all large VoD services in competing markets within the UK, and therefore will not provide particular firms with strategic advantages, or limit one side's ability to compete. The two-tiered approach may increase small services'

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<sup>40</sup> [Competition impact assessment](#), CMA 2015



ability to compete with the large services. This new regulation will level the playing field between the larger overseas VoD services and existing domestic services, as they will now all have to operate under the same regulation.

- c. *Will the measure limit the suppliers' incentives to compete vigorously?* As set out above, the updated regime is likely to strengthen the ability for smaller services to compete, and also strengthen the ability for domestic services to compete with large overseas services seeing as they will be under the same rules. As a result, the regulatory playing field will be levelled. Therefore it is likely that the measure may be supportive of competition, but will certainly not limit anybody's incentives to compete vigorously.
- d. *Will the measure limit the choices and information available to consumers?* Under the preferred option the new regime is expected to have a positive impact on the audience viewing experience from Tier 1 services as they will receive better protection from and more information on potentially harmful content to make informed choices over what they, and younger audiences they are responsible for, watch. During stakeholder engagement, services indicated that any significant costs they incur might be passed onto the consumer through higher subscription fees. The costs are likely to be minimal (in context of turnover), and therefore any subsequent negative impact on the product that VoD services provide and the choices and information available to consumers is expected to be minimal.

169. Therefore, as per the CMA's guidance, an in-depth competition assessment would be disproportionate for this measure. Particularly as elements of the enhanced regulation are to be determined by Ofcom, following implementation of primary legislation.

## **4.0 Post Implementation Review/Monitoring and Evaluation Plan**

170. As set out in the 'steps to address evidence gaps' section, more analysis will be done to increase understanding and enable quantitative appraisal of the key impacts of the enhanced regime, to inform a further IA alongside the necessary secondary legislation.
171. Following the legislation, Ofcom will lead on monitoring and evaluation. The proposed regulatory changes will be implemented following a period of further consultation and impact assessments from Ofcom (as set out earlier in this assessment). Ofcom, as an ongoing function (and legislative duty), will ensure that it carries out its regulatory functions in an effective and proportional manner. As an independent regulator, Ofcom will undertake its own comprehensive monitoring and evaluations (subject to parliamentary oversight) as it currently does under existing VoD regulation. Ofcom will be given the necessary powers to collect data to carry out its regulatory functions - including reviewing its effectiveness. DCMS will consider the implementation and effect of VoD regulatory changes on an ongoing basis, including considering whether a formal PIR should take place (though accounting for the length of time for implementation and an appropriate period for new rules and regulation to settle, a formal PIR is unlikely to be considered before 2028), within the appropriate boundaries of Ofcom's regulatory independence, and without duplicating the work of Ofcom.