

PART 3 – REGULATION OF ON-DEMAND AUDIOVISUAL MEDIA SERVICES

Current Position

1. In the United Kingdom regulatory standards in television broadcasting have been applied for many years under successive Television Acts and Broadcasting Acts, supplemented most recently by the Communications Act 2003, and successive BBC Royal Charters and Agreements. Under the present model, standards are defined in Ofcom's Broadcasting Code and related Codes and guidance notes, which apply to all UK television broadcasters.
2. Content standards in television broadcasting are overseen by Ofcom and the BBC Trust. The BBC Trust also oversees content standards for the BBC's video-on-demand services. Until the Communications Act 2003, other video-on-demand services effectively fell within the definition of broadcasting services, but since then neither Ofcom nor any other agency has had a statutory responsibility for content standards in on-demand services provided by other providers.
3. The UK audiovisual industry has set up two self-regulatory bodies, the Association for Television on Demand (ATVOD) and the Independent Mobile Classification Body (IMCB). ATVOD and IMCB have agreed codes of practice with the service providers whom they cover and set up procedures for handling complaints from customers. You can find out more about ATVOD and IMCB on their websites: www.atvod.co.uk and www.imcb.org.uk. It should be noted that not all providers of video-on-demand audiovisual services are members of ATVOD or IMCB.
4. Standards in advertising on television are overseen by a co-regulatory arrangement between Ofcom, which has statutory responsibility, the Broadcast Committee of Advertising Practice (BCAP), which maintains the Television Advertising Standards Code⁵ under contract from Ofcom⁶, and the Advertising Standards Authority (ASA) which investigates complaints about apparent breaches of the Code.
5. There is only one significant respect in which current UK controls on commercial communications on television do not meet the requirements of the AVMS Directive. This is in relation to product placement. Product placement is currently prohibited in the UK under the terms of Ofcom's Broadcasting Code, but the Directive is likely to require a stronger, explicit prohibition in national law. Part 4 of this consultation considers the issues and options in relation to product placement.
6. Advertising in on-demand services is currently overseen by the Committee of Advertising Practice (CAP) which is a self-regulatory arrangement under the aegis of the ASA. CAP maintains the British Code of Advertising, Sales Promotion and Direct Marketing which applies to all non-broadcast advertising.
7. You can find out more about the ASA, CAP, BCAP and the advertising codes at www.asa.org.uk and www.cap.org.uk.

⁵ The statutory regime for Ofcom's standards code in relation to advertising is contained in sections 319 and 321 of the Communications Act 2003; in particular, see sections 319(1), 2(h), 2(i) and (3).

⁶ Ofcom have contracted out this function by Order (SI 2004/1975) under the Communications Act 2003 and the Deregulation and Contracting Out Act 1994.

What the AVMS Directive requires

8. The AVMS Directive sets out a series of standards and requirements for all audiovisual media services, for video-on-demand services only, and for television broadcasting only (see Part 1, paragraphs 8-12). Member States must ensure that service providers observe these standards and requirements (or, in a few cases, encourage them to do so). In relation to television broadcasting, for most of the requirements of the Directive, the BBC Trust, Ofcom and the ASA/BCAP already have the power to act and need only to adjust their codes to reflect changes in the requirements between the TVWF and AVMS Directives. In relation to on-demand services, however, a new regulatory structure will be required in the UK in order to implement the AVMS Directive and oversee the new content and advertising standards.
9. The UK Government will therefore need to legislate in order to empower one or more regulatory bodies to draw up and enforce codes of practice for providers of such services and providers of advertising in such services.
10. The rest of this Part of the consultation document considers:

Part 3A: the options for regulating the content of programmes in on-demand audiovisual media services; and

Part 3B: the options for defining and regulating advertising in on-demand audiovisual media services.

PART 3A – A REGULATORY SYSTEM FOR ON-DEMAND AUDIOVISUAL MEDIA SERVICES

What the AVMS Directive says

1. The AVMS Directive requires the UK and other EU Member States to ensure the existence of a regulatory system for on-demand audiovisual media services.
2. The Directive explicitly encourages the use of co- and self-regulation wherever possible. Recital 36 notes that:

“experience has shown that both co- and self-regulation instruments can play an important role in delivering a high level of consumer protection”.

This Recital also states that implementation of the Directive should not:

“disrupt or jeopardise current co- or self-regulatory initiatives which are already in place within Member States and which are working effectively”.

However, it also states that:

“while self-regulation might be a complementary method of implementing certain provisions of this Directive, it should not constitute a substitute for the obligations of the national legislator”.

3. Article 3.3 of the AVMS Directive encourages Member States to employ self- or co-regulatory solutions in this area. In view of the formal, legal obligations which the Directive creates, however, the Government is satisfied that a system of self-regulation for on-demand audiovisual media services is not sufficient to implement the Directive’s requirements in the UK.
4. In the Government’s view, the Directive requires Member States to ensure that video-on-demand services are regulated by either:
 - a formal system of regulation operated by State institutions and/or a legally established regulator such as Ofcom; or
 - a system of co-regulation.
5. The Government’s strong preference – supported by the Directive - is for a system of co-regulation. This would allow the UK video-on-demand industry itself to take the lead in setting and enforcing standards for the content of its services. There would need to be legislation which allowed either the Government or Ofcom, as the national regulator, to intervene – but only if strictly necessary, and as a last resort - in order to ensure that the content standards required by the Directive were met. However, for the most part, the scheme would be expected to operate independently, with little if any intervention by Government or Ofcom. If it could not do so, it would have failed and would have to be replaced.
6. Co-regulatory schemes of this sort operate successfully in a number of other areas notably in relation to broadcast advertising, for which the Advertising Standards Authority is the co-regulatory authority and where there are backstop powers for Ofcom and the Office of Fair Trading to intervene under particular circumstances.

Requirements of the regulatory system

7. The regulatory body or bodies for programme content in on-demand audiovisual media services will need to implement and enforce the mandatory requirements set out in Articles 3a, 3b, 3d, 3h and 3i of the Directive. It/they may also be required to implement and enforce the requirements relating to advertising (Article 3e), sponsorship (Article 3f) and product placement (Article 3g) – see Part 3B of this consultation document. In addition, it/they may also be asked by the Government to oversee measures in relation to Article 3c.
8. An important aspect of the regulatory models described below is the means through which it is decided whether any particular service should be subject to the regulatory regime. This issue will ultimately be determined by the legislation, and therefore, potentially, in Court. However, under some models there will also be a role for the regulatory authority, potentially giving advice and/or issuing guidance to help service providers determine the status of their services.
9. There are a number of criteria which need to be considered in setting up a new regulatory or co-regulatory system. These include:
 - need to implement the Directive effectively
 - transparency to the public and to industry
 - reasonable consistency with existing content standards for broadcast content and for advertising
 - incentives for video-on-demand providers to participate in the scheme
 - incentives for video-on-demand providers to comply with the rules
 - risk of creating new barriers to entry to the sector
 - public awareness and visibility of the scheme
 - consumer confidence
 - resources and workload
 - costs and funding mechanisms
 - existing relationships
 - flexibility and future proofing
 - complaints handling, appeals and enforcement
10. The design of the co-regulatory system needs to address all these criteria, but its operation, once established, could be reasonably straightforward.

The Structure of the Regulatory System

Membership

11. There is a basic choice about whether or not the regulatory system should operate on a membership basis. If it did, then every video-on-demand service provider might be required by law to be a member of an industry body which had been designated as a co-regulator for video-on-demand services, with membership effectively a prior condition for providing a video-on-demand service.

12. A system which was not based on membership might nevertheless require service providers to seek prior approval from the co-regulator – or simply to notify it – before providing a service. Alternatively, the co-regulator’s Code could act as a set of ‘general conditions’ by which all video-on-demand providers would have to abide in order to provide their service. Providers would then not need to join the industry body, notify it or seek prior approval from it.
13. The question of whether or not there should be membership has implications for the funding and legitimacy of the co-regulatory body and for the offences which might underpin its regulation of the industry.

Funding

14. A regulatory system which operated on a membership basis could proceed on the basis of a membership fee, possibly a graduated one, set by the industry body itself and aimed at covering its reasonable operating expenses.
15. If the system did not operate on a membership basis, that would imply that it could not support itself by fees and that some other basis of funding would then need to be found. There might also be issues about ‘free riders’ taking advantage of the existence of an industry-led regulatory system without contributing to it in any way.

Legitimacy

16. A membership-based regulatory system, in which the members were able to have a say in the running of the co-regulator and in the selection of those charged with its management and with drawing up and enforcing the Code, might be perceived as having a greater degree of legitimacy than a non-membership system. With the latter, the arrangements and procedures for selecting and appointing the co-regulator’s management and executive would need to be carefully considered. In particular, it would be important to avoid the impression that a small number of self-selecting operators were able to dictate to the wider industry.

Offences

17. A membership arrangement could be backed by a legal requirement for video-on-demand providers to be members of an approved industry co-regulatory body. The logical extension of that would be a new offence involving the provision of a video-on-demand service without being a member of a co-regulator.
18. If the regulatory system did not require membership of an industry body, then any offences would need to relate either to providing a video-on-demand service without having obtained prior approval or notified the co-regulator, or to breaching the industry Code, or particular parts of it.

Multiple co-regulators

19. It might also be possible to have more than one industry scheme, as is currently the case under the existing self-regulatory arrangements involving ATVOD and IMCB. But it would be more difficult to provide for that if the arrangements did not require membership of a scheme, since there could then be difficult questions about whose Code applied to any particular provider.

The Structure of the Regulatory System – basic legal provisions

20. Against this background, the Government has identified three possible overall models for the law which will be needed to set up the system for regulating video-on-demand services. The first two models imply a co-regulatory system. The third would involve direct regulation by Ofcom.
21. With either of the co-regulatory models (model 1 or model 2) there would also need to be answers to the practical questions about membership, funding, and offences which we have set out in paragraphs 10 to 18 above.
22. The sections that follow describe for each of the three options:
 - how the co-regulator⁷ would be given its powers;
 - how the scope of the scheme would be determined;
 - who would draw up its code and how; and
 - who would handle complaints and enforce the rules in the first instance.
23. They also consider who (Government or Ofcom) will be able to exercise 'backstop' powers in the event that the regulatory system fails to prevent breaches of the requirements of the AVMS Directive.

Model 1 – Co-regulation – direct assignment of powers to co-regulator

24. Under this model the Government⁸ would designate the co-regulator, so as to assign powers and duties to it. The co-regulator would then be responsible for drawing up and maintaining a standards code in conjunction with industry, and for monitoring compliance, complaints handling and enforcement (covering a range of sanctions). There would be provision for backstop powers to rest with Ofcom so that repeated breaches of the code could be addressed.
25. The Government would have an ultimate power to remove the designation of the co-regulatory institution.
26. The overall structure would allow day to day operation of the regulatory regime by the co-regulatory institution. This would provide maximum flexibility in the development and operation of the new regime.
27. In the event of systemic failure a new designated body would need to be appointed by the Secretary of State at speed. The regulations would therefore need to be drafted in such a way as to enable an interim regulator to be appointed pending public consultation on new arrangements.
28. Model 1 would have costs for video-on-demand providers, since they would need to set up and run the co-regulatory body. However, these costs might be offset to some degree, as ATVOD and IMCB have already carried out a lot of work in terms of developing codes and standards and setting up complaints procedures.

⁷ or co-regulators - throughout this section the singular includes the plural.

⁸ in practice, the Secretary of State for Culture, Media and Sport, with the agreement of Parliament.

29. Like models 2 and 3, it would benefit consumers by providing an assurance that UK video-on-demand providers will meet the minimum content standards set out in the AVMS Directive. Like model 2, but unlike model 3, there should also be a benefit to industry in that they will effectively own and operate the co-regulatory system.
30. Compared with model 2, model 1 would introduce a potential inflexibility if there were difficulties with the system. It could well be easier and more effective for Ofcom to address these than for the Government to do so.

Assignment of Powers	Scope	Code	Complaints Handling	Enforcement	Backstop
Regulations would enable the Government to assign powers to the co-regulator	Legislation	Co-regulator in conjunction with industry	Co-regulator	Co-regulator (censure and fines)	Ofcom (for code breaches) and Government (if there is systemic failure)

Model 2 – Co –regulation - Ofcom assigns powers to co-regulator

31. Under this model the Government would assign powers to Ofcom on the basis that Ofcom would devolve responsibility for the day to day operation of the regulatory regime to the co-regulatory institution. The final decision on the selection of this body would be a matter for Ofcom in conjunction with DCMS and would require public consultation.
32. The scope of the regulatory arrangements as defined in legislation would be supplemented with more detailed guidelines developed by the co-regulator. The co-regulator would be responsible for drawing up and maintaining a standards code, in consultation with the industry and agreed with Ofcom. It would also be responsible for complaints handling and have some enforcement powers (the ability to sanction service providers in the event of code breaches).
33. Ofcom would retain backstop powers, which would enable it to impose sanctions in the event of serious breaches, and to intervene if there was evidence that systemic failure had occurred in the operation of the co-regulatory body.
34. This model partly replicates the co-regulatory arrangements currently in place for broadcast advertising regulation.
35. As with model 1, there would be costs for the video-on-demand industry, which would need to set up and run the co-regulatory body. But again, these might be offset by work that the industry has already done in this area.
36. As with models 1 and 3, consumers would benefit from the assurance that UK video-on-demand providers will meet minimum EU content standards. There should also be a benefit to industry from their effective ownership and operation of the co-regulatory system.

Assignment of Powers	Scope	Code	Complaints Handling	Enforcement	Backstop
Legislation assigns powers to Ofcom	Legislation and co-regulator's guidance	Co-regulator in conjunction with industry and agreed with Ofcom	Co-regulator	Co-regulator (censure, fines, etc)	Ofcom (both for Code breaches and for systemic failure)

Model 3 – Statutory – Ofcom as the regulator

37. Under this model, the Government would assign powers to Ofcom to regulate video-on-demand services. The scope of the regulations would be defined in legislation, while the detailed standards code would be drawn up by Ofcom in consultation with industry and the Government. Responsibility for monitoring and enforcement would be assigned to Ofcom.
38. Service providers falling within the scope of the legislation might be required to obtain a licence from Ofcom (as with the current regime for television broadcasting); or they could be required to seek prior approval or to notify Ofcom before offering their services; or they might simply be required to comply with the Code and Ofcom's general conditions (a variation of Ofcom's general conditions regime which is in place for the telecommunications networks and services industry).
39. This model is not co-regulatory. But it would provide a system that is well understood and, having been tried and tested over some years, found to be effective. It could generate economies of scale in regulation.
40. Ofcom's work would be funded by means of a levy on service providers.
41. In the Government's view this model has an important disadvantage compared with models 1 and 2. Consumers would benefit from the assurance that UK video-on-demand providers will meet minimum EU content standards, but there would be a downside for the video-on-demand industry, which would have no part in the ownership or operation of the arrangements. The UK would have turned its back on the effective self-regulatory arrangements in this area that have been pioneered by ATVOD and the IMCB.

Assignment of Powers	Scope	Code	Complaints Handling	Enforcement	Backstop
Legislation assigns powers to Ofcom	Legislation	Ofcom in consultation with industry and Government	Ofcom	Ofcom	N/A

Preferred Option

42. Under model 1, the co-regulator would be nominated by the Government. That would in our view lead to a relatively inflexible arrangement that might not be able to respond in the most appropriate way if there were difficulties in the system that needed to be addressed.
43. Model 3, in which Ofcom would regulate video-on-demand providers directly, is not a co-regulatory system, and would, therefore, not have the advantages of independence and flexibility which are sought.
44. The Government's initial preference, therefore, is for model 2. That would give Ofcom an ultimate, overall responsibility for overseeing content regulation in both television and video-on-demand services. But we would welcome views on this.

QUESTIONS

10. Do you agree that the criteria at paragraph 9 are the right ones for determining the best regulatory option? Are there any other important criteria?
11. Are there any other possible co-regulatory or statutory models that you think we should consider? If so, please describe them and say why they meet the criteria.
12. Should service providers be subject to a membership, prior approval, notification or general conditions regime?
13. Who should be responsible for interpreting the legislative definitions and determining which services are subject to the regulatory framework - Government, Ofcom or an appointed industry co-regulator?
14. Who should be responsible for developing and maintaining a standards code and any additional guidance?
15. Who should be responsible for monitoring compliance, investigating complaints and reviewing any breaches of the code?
16. What sort of sanctions should apply and who should apply them?
17. If we opt for a co-regulatory structure we would need to introduce legislative 'backstop' powers. What should be the second tier level of enforcement to address cases of repeated breaches or system failure?
18. In the light of all these considerations, which option do you prefer and why?

The Government would also welcome information from respondents about the potential impact of the options for the co-regulatory system for video-on-demand services in response to the five impact and competition assessment related questions at the end of the list of questions in Part 6.

PART 3B - ADVERTISING IN ON-DEMAND AUDIOVISUAL MEDIA SERVICES

What the AVMS Directive says

1. Advertising ('audiovisual commercial communication') is defined in Article 1(h) of the AVMS Directive as:

"... images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement."

2. Article 3e of the Directive sets standards for the content of advertising in all audiovisual media services, both television broadcasting and on-demand services.
3. The Directive also sets out specific standards for sponsorship in Article 3f and for product placement in Article 3g. These also apply to both television broadcasting and on-demand audiovisual media services. Both sponsorship and product placement are identified in Article 1(h) as forms of audiovisual commercial communication (i.e. advertising).

Issues

4. This part of the consultation document discusses the options for ensuring that the UK meets the advertising requirements in the AVMS Directive in respect of video-on-demand services. It covers four issues:
 - how the advertising covered by the controls should be defined;
 - the arrangements for regulating advertising in video-on-demand services;
 - the arrangements for regulating product placement in programmes in video-on-demand services; and
 - the arrangements for regulating the sponsorship of programmes in video-on-demand services.

Scope - what advertising should the controls cover?

5. As described earlier, video-on-demand services are unlike scheduled television. In a traditional television service the viewer chooses to watch a particular channel, and it is the broadcaster who effectively decides which programmes the viewer, having selected that channel, is going to see.
6. With a video-on-demand service, the viewer makes a conscious choice not only to use the service but to access particular programmes which the service is offering, and it is the viewer's choice which determines when the programme is transmitted to him or her. While the viewer is using a video-on-demand service, advertisements may appear:
 - a) as part of a specific programme, either during breaks, or at the start or finish of the programme (bookending); or

- b) within features of the service which are not linked to a specific programme, such as the navigation menu.
7. In either case, the advertisements will appear as the result of a contract into which the video-on-demand service provider has entered with an advertiser, advertising agency or advertising network. Unlike the position over the choice of programme, the user has no choice as to the advertisements which he or she will see as a result of having decided to use a specific service or having selected a specific programme.

Which advertisements are covered?

8. The AVMS Directive requires Member States to ensure that the advertising standards which it sets in Article 3e are met by advertisements which '*accompany or are included in a programme*'.
9. There are two possible interpretations of which advertisements in video-on-demand services should be regulated under the AVMS Directive. One would give a wider meaning to "accompany" than the other.

Option A – based on programmes

10. Regulation could be confined to advertisements which appear within, or are adjacent to (i.e. bookending) programmes – that is, those which are covered by case a) above.

Option B – based on the service

11. Alternatively, regulation could apply to all advertising which appears as part of the service. In addition to the advertisements covered by Interpretation A, this would also cover any other advertisements which appear on the screen on which the viewer is accessing the video-on-demand service because he or she has elected to access that particular video-on-demand service. Such advertisements still "accompany" programmes, but in a wider sense.
12. This interpretation would include all the advertisements in case a) above, plus those in case b).

Assessment of Options

13. Option A has the narrower scope and would affect fewer advertisements. Option B has the wider scope and would affect more advertisements.
14. Option B would provide a single set of requirements for all advertisements which a viewer sees as a result of accessing a particular service. This would in the Government's view provide a more consistent scheme of regulation and is to be preferred. But we welcome views on this issue.

On-screen advertisements which are not covered by the Directive

15. Consumers often access video-on-demand at the same time as they are accessing other services. When they do that, the video-on-demand service may only occupy only a part of the computer, television or mobile screen which they are using.

16. The other parts of the screen may contain advertisements. These advertisements however will have no connection with the video-on-demand provider or the service he is offering, and the AVMS Directive does not cover them.
17. Advertisements of this sort are not covered by the terms of the AVMS Directive and would not be affected by either of the Options, A or B, set out above.

The regulatory system for advertising in on-demand services

18. The AVMS Directive encourages Member States to seek co-regulatory solutions for the controls on advertising in video-on-demand services. That is, it recommends that they should be the responsibility of industry, but with the possibility of intervention by the Government or the regulator (Ofcom) if there is a serious failure to meet the regulatory objectives.
19. Advertising in video-on-demand services, like all other non-broadcast advertising, is currently subject to the British Code of Advertising, Sales Promotion and Direct Marketing, drawn up by the Committee of Advertising Practice (CAP) under the aegis of the Advertising Standards Authority (ASA). The ASA is an industry-led body. As it is also responsible as Ofcom's regulatory partner for handling complaints about television advertising (under the separate BCAP code) it is able to act as a one-stop-shop for all public concerns and complaints about advertising and advertisements in the UK.
20. If the ASA finds that a video-on-demand advertisement has broken the requirements of the CAP Code it can require the advertiser to amend or withdraw the advertisement, a sanction which can have a significant cost to the advertiser. If the advertiser refuses to comply, further sanctions are available, as shown in the box below.

ASA SANCTIONS

Adverse publicity – ASA rulings receive a substantial amount of media coverage, which can be damaging to advertisers as well as helping to warn the public.

Ad Alerts – CAP may advise its members, including the media, to withhold their services from non-compliant advertisers or deny them access to advertising space.

Trading privileges and recognition – CAP trade associations and professional bodies may withdraw or temporarily withhold the recognition or trading privileges offered to their members and, in exceptional cases, expel advertisers from membership.

Pre-publication vetting – ASA and CAP may require persistent offenders to have some or all of their advertisements vetted in advance, until the ASA and CAP are satisfied that future advertising will comply with the Code.

Legal backstop – the ASA can refer some cases to the Office of Fair Trading (OFT), which has legal powers available to it, and can, in extreme cases, seek an injunction from the Courts.

Co-regulation – options

21. In Part 3A of this consultation we set out the options for the creation of a co-regulatory system led by industry to regulate the programme content of video-on-demand services. Part 3A discusses the legal arrangements which will be required to assign the responsibility for regulating video-on-demand services to one or more co-regulatory bodies.
22. There will also need to be legal arrangements for assigning the responsibility for regulating advertising on video-on-demand services to one or more co-regulatory bodies. As with video-on-demand as a whole, the law can provide for this responsibility to be assigned directly by the Government or it can provide for it to be assigned by Ofcom.
23. The law can also provide for the responsibility to be assigned to the same body or bodies as regulate video-on-demand as a whole, or it can provide for it to be assigned to a different body or bodies.
24. There are four basic options.

Option A

25. Regulation of advertising in video-on-demand services could be assigned to the Advertising Standards Authority.

Option B

26. Regulation of advertising in video-on-demand services could be assigned to the body or bodies responsible for regulating programme content in video-on-demand services.

Option C

27. Regulation of advertising in video-on-demand services could be assigned to another body or bodies.

Option D

28. Regulation of advertising in video-on-demand services could be assigned to the body or bodies responsible for regulating programme content in video-on-demand services, on the understanding that they will then assign it further to another body – either the Advertising Standards Authority, or someone else.

Assessment of Options

29. Option A would mean that the ASA could continue to act as a one stop shop for all public complaints and concerns about advertising in the UK. However, the ASA would need to draw up a new code specifically for video-on-demand services to add to its two existing codes for broadcast advertisements (BCAP) and advertisements in other media (CAP).

30. Option B would mean that all regulation of video-on-demand services would be the responsibility of the same body or bodies, in effect a one-stop-shop or shops for all aspects of video-on-demand services. On the other hand, it would mean that there was no longer a one-stop shop for all aspects of advertising – the ASA would have lost the role which it currently has in respect of advertising on video-on-demand services.
31. Option C would introduce one or more new bodies into the regulatory landscape for audiovisual media services. This would not seem to offer any particular benefit, especially as there is already a body in existence (the ASA) which has experience of regulating advertising in video-on-demand services.
32. Each of Options A, B and C would require a new advertising code specifically for video-on-demand to be drawn up and enforced by the body or bodies responsible (although these codes might nevertheless be based on the existing CAP and BCAP codes).
33. Option D is a potentially clumsy and lengthy process which seems to offer no particular benefit.
34. The Government's initial preference is for Option A. This seems to offer advantages for consumers, who will be able to continue to treat the ASA as a one-stop shop for all complaints and concerns about advertising, including advertising in video-on-demand services.
35. So far as the video-on-demand industry is concerned, Option A means that their advertising regulator (the ASA) would not be the same as their content regulator. But that is already the case with television and radio broadcasting (where the ASA regulates advertising, while Ofcom regulates programme content), where it does not seem to have caused any particular difficulty.
36. The Government would welcome views on these issues.

QUESTIONS

19. Should the controls on advertising in video-on-demand services cover
 - advertisements which appear onscreen as a result of the user accessing a particular video-on-demand programme?
 - advertisements which appear onscreen as a result of the user accessing a particular video-on-demand service?
20. Should there be only one co-regulatory body for advertising on video-on demand services?
21. Should such a body have its powers assigned to it by the Government, by Ofcom or by the body or bodies responsible for regulating programme and other content?
22. Should the Advertising Standards Authority be the body, or one of the bodies, which regulate advertising on video-on demand services?
23. Should regulation of advertising in video-on-demand services be handled by the body or bodies responsible for regulation of the programme and other content?

The Government would also welcome information from respondents about the potential impact of the options for regulating advertising in video-on-demand services in response to the five impact and competition assessment related questions at the end of the list of questions in Part 6.

Product placement

37. The AVMS Directive allows Member States to permit product placement in certain types of programming shown in television and video-on-demand services. Part 4 of this consultation sets out the details and poses some overall questions about product placement, and whether it should or should not be permitted in UK television and video-on-demand services. It also discusses the related issue of prop placement.
38. This part of the consultation focuses on just one issue: who should be responsible for regulating product and prop placement in video-on-demand services in the UK.
39. Product placement is identified in Article 1(h) as a form of audiovisual commercial communication (i.e. advertising). There would therefore be an argument for concluding that it should be regulated by the same body or bodies as regulate other advertising on video-on-demand services.
40. However, effective regulation of product placement will always concern the content of programmes. The rules which the AVMS Directive sets out about product placement in Article 3g specifically require Member States to ensure that:

".... (the) content (of programmes) shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider

.... (programmes) shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to (them)

.... (programmes) shall not give undue prominence to the product in question."
41. There is as a result also an argument for concluding that product placement in video-on-demand services, if permitted, should instead be regulated by the same body or bodies that regulate the programme content of these services, rather than by the body that regulates advertising on them. This is the way that product and prop placement are currently overseen for television broadcasting services.
42. The underlying principle is that a single institution should be responsible for all aspects of the regulation of programme content, and that clarity for programme-makers is best secured through the application of a single code of practice. If product or prop placement were regulated as part of advertising, there would be two regulators and two codes covering different aspects of content. One regulator and code would oversee product placement, the other regulator and code would oversee all other aspects of programme content.
43. For this reason, the Government's preferred option is for product placement to be regulated by the body responsible for regulating programme content in video-on-demand services.

Sponsorship

44. Similar issues arise in relation to sponsorship in video-on-demand services, in relation both to the sponsorship of programmes and to the sponsorship of the services themselves.

45. Like product placement, sponsorship is identified in Article 1(h) as a form of audiovisual commercial communication (i.e. advertising), and there is therefore an argument for concluding that it should be regulated by the same body or bodies as regulate other advertising in video-on-demand services.
46. But as the Directive makes clear, the regulation of sponsorship on video-on demand programmes and services also involves judgements about their content. Article 3f of the Directive requires Member States to ensure that:
- their content shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;*
- and that sponsored programmes and services
- ... shall not directly encourage the purchase or rental of goods and services, in particular by making special promotional references to those goods or services.*
47. As with product placement, there is therefore an argument for concluding that sponsorship should be regulated by the same body or bodies that regulate the programme content of these services, and not by the body that regulates advertising on them. Again, this is currently the case for broadcasting sponsorship.
48. The Government's preferred option is for sponsorship to be regulated by the body responsible for regulating programme content in video-on-demand services.

QUESTIONS

24. Should product placement in video-on-demand services, if allowed, be regulated by
- the body or bodies that regulate advertising on these services? or
 - the body or bodies that regulate programme content on these services?
25. Should sponsorship of video-on-demand programmes and services be regulated by
- the body or bodies that regulate advertising on these services? or
 - the body or bodies that regulate programme content on these services?

Summary: Intervention & Options

Department /Agency: DCMS	Title: Impact Assessment of legislative option for implementing the EU AVMS Directive - co-regulation of video-on-demand	
Stage: Consultation	Version: 1.0	Date: July 2008
Related Publications:		

Available to view or download at:

<http://www.culture.gov.uk>

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

The EU Audiovisual Media Services Directive (AVMS) requires Member States to ensure that video-on-demand (v-o-d) services meet basic content standards. It encourages 'co-regulation'. This is an arrangement under which the v-o-d industry regulates itself, devising and introducing Codes or other mechanisms to ensure that the EU content standards are met, dealing fairly with complaints from viewers, and issuing sanctions if necessary, but with a power for the public authorities to intervene in the event of a serious and sustained failure to meet the content standards in the Directive.

What are the policy objectives and the intended effects?

The objective is to create a co-regulatory system for video-on-demand in the UK. The effect would be that the United Kingdom would have a light-touch, industry-led system to give consumers of video-on-demand services supplied from the UK a guarantee that these met the EU-mandated standards. These standards prohibit incitement to violence on certain grounds and restrict access by children to v-o-d material which could be damaging to them. They also relate to identification, advertising, film copyrights and the promotion of European works.

What policy options have been considered? Please justify any preferred option.

Government is considering three options. Option 1 would see the Government appointing the industry's co-regulatory body or bodies. Under option 2, they would be appointed by Ofcom. Under option 3, Ofcom would regulate v-o-d services directly, with no input from industry. The Government's preference is for Option 2. That would offer flexible, light-touch arrangements benefiting both industry and the consumer. Option 1 and option 2 both pose important practical questions about how the co-regulatory body(ies) might actually work, and the consultation seeks views on these

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

2011

Ministerial Sign-off For consultation stage Impact Assessments:

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 Minister:

Andy BurnhamDate: July 2008

Summary: Analysis & Evidence

Policy Option: 2

Description: Establish a co-regulatory body (or bodies) for video-on-demand services, to be appointed by Ofcom

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Represents addition to existing assumed cost base of £200,000 per annum
	One-off (Transition)	Yrs	
	Average Annual Cost (excluding one-off)		Total Cost (PV) £ 1.72m
	£ NA		
£ 400.000			
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Not quantified
	One-off	Yrs	
	Average Annual Benefit (excluding one-off)		Total Benefit (PV) £
	£		
£		Other key non-monetised benefits by 'main affected groups' Assures that UK VoD providers will meet the minimum content standards which are set out in the AVMS Directive, and that this will be achieved by means of a flexible, light touch regime	

Key Assumptions/Sensitivities/Risks Without such a scheme 1) consumers of UK v-o-d services would have no guarantee that these will meet EU content standards, and 2) the UK would be liable to infraction proceedings under EU law.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £ Not Applicable	NET BENEFIT (NPV Best estimate) £ - 1.72m
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What is the geographic coverage of the policy/option?			United Kingdom	
On what date will the policy be implemented?			December 2009	
Which organisation(s) will enforce the policy?			Ofcom or industry	
What is the total annual cost of enforcement for these organisations?			£ 400,000	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ 200,000	
What is the value of changes in greenhouse gas emissions?			£ nil	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase of £	Decrease of £	Net Impact	£	

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

The Audiovisual Media Services Directive sets out minimum content standards for video-on-demand services in the EU and requires the Government to ensure the existence of a regulatory system to secure these standards for services operating from within the UK. Article 3.3 encourages the use of co-regulation and self-regulation, and Recital 36 recommends that implementing the Directive should not 'disrupt or jeopardise' existing self-regulatory initiatives in the video-on-demand industry which might already be in place and working.

A 'self-regulatory' scheme is one which is operated entirely voluntarily by the industry itself, without any legal backing. Industry members can enter it if they wish, but are not obliged to do so, and there is no law requiring them to abide by any industry Codes or judgements that may emerge from it. Self-regulation offers cost and flexibility advantages, provided that there are appropriate incentives in terms of market needs and /or the possibility of statutory intervention.

Self-regulation is more likely to be effective in a competitive market, with industry participants committing to it in order to increase or protect their market share by differentiating their products from others on grounds of superior protection of customers. This assumes that consumers value the protection afforded to a greater extent than other attributes, some of which may be the subject of regulation. Nevertheless, highly competitive markets are also likely to attract some who seek to supply market niches with non-compliant material.

A more mature industry may be able to operate self-regulation because participants are more likely to have the resources necessary to design and enforce regulations. In addition, participants in mature industries are more likely to be committed to long-term involvement in the market, and have much to lose if found to be in contravention of regulations or codes. On the other hand, maturity may also be accompanied by the development of vested interests – in which case, self-regulation may tend to serve the interests of established firms.

A co-regulatory scheme is similar to a self-regulatory one in that it the industry takes the lead in setting and enforcing standards for the content of its services. But in this case there is legal backing for its activities. This legal backing might, as discussed in the consultation document, take a number of different forms, but whatever its precise nature it will mean that an operator who consistently disregards the co-regulatory body's standards or judgements will be ultimately be subject to legal sanctions of some kind.

In the United Kingdom, there are already two industry self-regulatory bodies which cover parts of the video-on-demand industry. ATVOD (the Association for Television on Demand) and IMCB (the Independent Mobile Classification Board) have codes of practice agreed with the service providers whom they cover and procedures for handling complaints from customers.

These self-regulatory schemes are welcome and have so far proved effective, although they do not cover all UK service providers. The Government however takes the view that the legal requirements of the Directive are such that purely self-regulatory schemes are insufficient. In these circumstances the Government's strong preference is for a system of co-regulation.

The consultation document considers three options. Two of them are co-regulatory. In Option 1, the industry co-regulatory body (or bodies – there could be more than one) would be nominated directly by the Government. In option 2, they would be nominated by Ofcom. Option 3 is a system of direct regulation, in which Ofcom would regulate the video-on-demand industry directly without any input from industry bodies.

The video-on-demand industry in the UK and the EU

At the start of 2007, the European Audiovisual Observatory identified 142 separate video-on-demand services across 24 European countries. The Netherlands, France, Germany and the United Kingdom together accounted for some 65 of these services – that is, nearly half of them. The Observatory characterised these four countries as having a 'well-developed' supply of video-on-demand services, meaning that they each had more than 10.

But such is the dynamism of the sector that a revised estimate by the Observatory for the same 24 countries at the *end* of 2007 found 258 services – an increase of 116 (82%) in one year. Across Europe at the start of 2007 the majority of the services were delivered via Internet and IPTV with only a small percentage (10.7 %) distributed by cable, satellite and digital terrestrial television.

Scale and growth in the UK

Video-on-demand in the UK is characterised by diversity of players, distribution networks, and business models, with increasing competition between them. Business models range from advertising funded through subscription-based approaches to pay-per-view. At the start of 2007 the European Audiovisual Observatory identified 13 distinct video-on-demand services in the UK, delivered variously by means of the Internet, IPTV, cable, satellite and digital terrestrial television (DTT).

By the end of 2007 another 3 services had appeared in the UK. One of these was the BBC iPlayer – this had over a million download requests on 'official' launch day (Christmas Day 2007) and a total of over 20 million during April 2008. The iPlayer service became available on digital cable (rather than solely on the internet) in May 2008, and this might result in a still higher rate of download requests to the service.

Beyond the specific case of the BBC, market appraisal in the video-on-demand sector is, as the European Audiovisual Observatory has noted, extremely difficult. Many suppliers do not publish or communicate download figures. In 2006 the total UK video-on-demand market was estimated to be worth £66 million, with an annual growth rate of 50%.

There is however a consensus that the market took off in the first quarter of 2006 and continues to expand rapidly. Flexfilm have said that 80% percent of the 2.2 million homes in the UK which are eligible for its services (which are connected to the Virgin Media cable network) had already watched one film via video-on-demand by July of that year (some 1.8 million people). BSkyB has stated that its Sky Anytime service recorded more than a million downloads during 2006.

Substitution for 'linear' TV

Video-on-demand consumption is more likely to be a substitute for linear television viewing than an addition to it. The amount of time people spend on viewing is limited, and competition for this limited time is to a great extent a zero sum game in which one provider gains market share against another. This degree of economic substitution between the different forms of video consumption is clearly directly relevant at the individual level but it also indirectly affects the wholesale (upstream) channel provider market.

Thus in the initial Public Value Test for the iPlayer service the BBC Trust noted "*consumption was expected to be largely substitutational – i.e. some consumption of BBC programmes on the television and radio will switch to on-demand. As such we expect the proposals to help maintain the total volume of consumption of BBC programmes*". Specifically, the Trust expected iPlayer to contribute to the maintenance of the combined BBC weekly reach (on all services) at over 90%.

Ofcom's projections for the impact of the BBC iPlayer covered the five years 2006-2011 and were driven by internet take-up. They included high, central and low scenarios, under which there were corresponding falls in linear television consumption of 33%, 20%, and 13%. The BBC Trust's own projections were broadly compatible with Ofcom's high impact scenario.

More generally, newly emerging systems allow consumers to use the internet or hybrid Freeview/IPTV services such as BT Vision to mix and match between free-to-air, paid-for and on-demand content. PVR-based content storage enables libraries of material to be stored and further intensifies competition for audiences. The standard model of consumer television demand indicates that these competition effects exist between pay and free to air services and that programming need not be necessarily be of the same character or indeed obviously a close substitute in order to exert competitive pressure⁹.

Video-on-demand in the mobile sector

The UK's total mobile entertainment market has generated revenues of around £600 million per annum since 2005, with mobile games generating approximately £200 million in revenue in 2007. Around 20% of the UK's 47 million mobile subscribers purchase mobile entertainment. Males and the 18-35 year old age group are the dominant users.

The widely predicted convergence of advertising and entertainment industries is continuing to evolve on the mobile platform. In April 2007 3 became the first operator to launch an advertising funded service and within six months of one million subscribers had signed up to it, although the number viewing content on a regular (daily) basis is lower.

In the UK almost 77% of mobile phone subscribers have video-enabled handsets and over 20% are owners of TV enabled mobile phones. The UK mobile entertainment market is widely predicted to grow rapidly, perhaps more than doubling to £1.4 billion by 2012.

However, the number of users who access video-on-demand services on mobile phones is relatively low, and is perhaps likely to remain so. Current figures are that mobile TV services are used by only 1% of all mobile telephone users, and video-on-demand services by 1.7%.

The options

The Government has ruled out the 'do nothing' option.

There is no indication that UK video-on-demand services breach any of the standards in the Directive. Indeed, the standards of the Directive are already exceeded for the most part. There are also self-regulatory systems in place to which many UK providers belong. But the Directive's requirements are clear and mean that the UK must have arrangements for securing the minimum EU standards for video-on-demand content in a way that applies to all relevant providers and has legal backing. This means that maintaining existing arrangements cannot be an option even if they are extended to the whole industry.

The three options for complying with the Directive's requirements in respect of video-on-demand which are outlined in the consultation document are:

1. a UK co-regulatory body (or bodies) for video-on demand, which the Government would appoint directly;
2. a UK co-regulatory body (or bodies) for video-on demand, which Ofcom would appoint;
3. no UK co-regulatory body for video-on-demand - the requirements of the Directive would be secured through direct regulation by Ofcom.

All of these options leave open the precise *mechanism* which the co-regulators (in options 1 or 2) or Ofcom (in option 3) would then use to achieve compliance with the Directive's standards. For instance, an industry co-regulator might operate on a membership basis or it might, alternatively, set general conditions which all providers had to abide by in order to provide their service.

⁹ See B Owen and R Wildman (1992) *Video Economics* Cambridge: Harvard University Press, especially pp.101-106

Similarly, if Ofcom were regulating the industry directly under option 3, it might operate a licensing regime similar to that which applies in broadcasting. Or it might be better for Ofcom to set general conditions to which, again, providers had to adhere in order to provide their service.

Although this consultation invites views on these more specific questions, they can only be determined once the overall framework of the new structure is clear and there are answers to the fundamental issues of whether or not there should be a co-regulatory body or bodies, and if so who should appoint it or them.

Costs of the three options

Under the current arrangements in the UK, some providers of video-on-demand services belong to one of the two industry self-regulatory bodies, ATVOD and IMCB, and others do not. In the case of IMCB, covering mobile content, the six signatories of the mobile code do not include all of the relevant content providers. However, IMCB's code covers all commercial content which is supplied via a mobile phone network because the signatories include all five of the networks.

ATVOD's membership currently consists of BT, Virgin, Tiscali, ITV, Channel 4, Five, FilmFlex, and OnDemand, with the BBC as associate members. Other UK video-on-demand providers (for example, Sky) do not currently belong either to ATVOD or to IMCB.

Options 1 and 2 will result in costs to the industry accruing from a) setting up the video-on-demand co-regulatory body/bodies and b) running it/them thereafter. There may however be some offsetting savings, in that ATVOD and IMCB have already pioneered much of the necessary work in terms of developing codes and standards and setting up complaints procedures.

It is not easy to estimate how much the overall cost of Options 1 or 2 would be, but costs seem likely to be relatively low especially in relation to the turnover of the industry as a whole. ATVOD's average membership fee is in the order of £20,000 per annum and its annual budget less than £200,000.

The number of complaints to ATVOD about the content of video-on-demand programming in the organisation's approximately four years of existence is nil (though it has had complaints about some technical issues). The position in respect of IMCB is similar.

We have assumed for illustrative purposes that the introduction of a co-regulatory system under option 1 or 2 will lead to a doubling of costs in comparison to the present arrangements. But we think this will prove a pessimistic assessment given that it will be in the interests of the industry – which will run any co-regulatory system – to keep its costs down.

Under Option 3, there would be costs to Ofcom as well as to the industry, with Ofcom in effect recouping its costs from the industry. But we see no reason to assume that overall costs (that is, costs to Ofcom plus costs to the industry) will be any higher than under options 1 or 2.

Benefits of the three options

There is a consumer benefit to any of Options 1, 2 or 3 in that each should provide assurance that UK video-on-demand providers will meet the minimum content standards set out in the AVMS Directive, and that providers who consistently flout these will no longer be able to operate from this country.

As against Option 3, Option 1 and Option 2 provide a benefit to video-on-demand suppliers, in that they will effectively own and operate the co-regulatory system(s). That should give them an assurance that the arrangements will remain light-touch and flexible while assuring the necessary standards for consumers.

Option 2 provides an additional benefit to Option 1, in that it will be easier for Ofcom than the Government to intervene to correct problems with the co-regulatory arrangements, should any arise. That would be to the advantage of both consumers and suppliers.

Competition assessment

Any of Options 1, 2 and 3 could have competition effects. In each case, the existence of the new EU standards for video-on-demand content, and their enforcement by Ofcom or an industry co-regulatory body, will require that video-on-demand suppliers ensure that their programming is in compliance with the new rules. That compliance cost could weigh more heavily upon a new, start-up supplier.

However, much video-on-demand content is material that has previously been shown either on television or in the cinema and is known already to comply with the relevant standards – which, certainly in the case of television, will be more demanding than the EU standards for video on demand.

Under Options 1 and 2, there would be a co-regulatory body or bodies, run by the video-on-demand industry itself. If video-on-demand providers were required to belong to such a body, then it would be important to ensure that application procedures and membership fees were not perceived as working to the disadvantage of new or start-up suppliers. It would also be important to ensure that the regulatory body reflected the interests of consumers as well as of providers.

The co-regulatory body (or bodies) would also determine the outcome of complaints against particular providers. It would again be important to ensure that these procedures operated fairly, and were perceived by all concerned as not working to the disadvantage of particular suppliers or groups of suppliers.

Should such difficulties arise, it would be important that Ofcom, as a neutral, non-political regulator, could step in quickly to ensure that they were properly and effectively resolved. Option 2, as opposed to Option 1, provides that possibility.

Small firms impact test

Under existing arrangements for television broadcasting, Ofcom has issued licences (television licensable service licences) to a large number of small firms which operate television stations. Their procedures do not appear to be perceived as an obstacle to smaller operators. Ofcom's fees are related to relevant turnover, but with minimum and maximum fees.

But it is not clear whether a co-regulatory body would be seen in the same light. The issues which we discuss in the competition assessment section (above) are also relevant in this context. In particular it is important that application procedures and membership fees are not perceived as working to the disadvantage of new or start-up suppliers.

Advertising in video-on-demand services

Total UK spend on advertising in 2006 across all media was £19 billion. Most of this (£13.5 billion) was display as opposed to classified advertising, and television advertising was the largest single category of display advertising, with a 28.9% share worth £3.9 billion. Internet advertising was worth just over £2 billion in 2006, with most (58%) being "paid for search" with the remainder being display advertising (23%) and classified.

Self-regulation of non-broadcast advertising dates from the founding of the Advertising Standards Authority (ASA) in 1962 with the aim of ensuring that advertisements were "legal, decent, honest and truthful". Since 1988 this has been backed up by statutory powers and possible referral to the Office of Fair Trading (OFT).

The relevant ASA codes of practice are divided between broadcasting (Broadcast Code of Advertising Practice - BCAP) and non-broadcast arms. In broadcasting, compliance with the ASA's Code is a condition of the relevant Ofcom licence.

The Broadcast Advertising Standards Board of Finance Limited (basbof) funds the ASA's regulation of broadcast advertising through a levy of 0.1% of the advertising cost to the client collected through the

agencies or media owners. In 2007 the income from this levy was £3.6 million, of which 94% was paid towards self regulatory costs, providing funds of almost £3.3 million to the ASA.

The consultation

The consultation document sets out a number of options for the regulation of advertising in video-on-demand services. It asks whether the advertising which is regulated should be:

- just those advertisements which are contained within programmes or which 'bookend' them; or
- all advertisements which appear as part of the service.

It discusses who should regulate advertising in video-on-demand services. The four options are

1. assigning the power to regulate advertising in video-on-demand services to the Advertising Standards Authority (ASA);
2. assigning it to the co-regulatory body (or bodies) which oversees programme content;
3. assigning it to the co-regulatory body (or bodies) on the understanding that they will then assign it to the ASA; or
4. assigning it to someone else altogether.

The consultation document asks similar questions about who should regulate the sponsorship of programmes on video-on-demand services and product placement in those programmes (if product placement is allowed).

The consultation document makes clear the Government's initial preferences. These are that regulation should cover all advertisements which appear in a video-on-demand service, and be carried out by the ASA, except for the regulation of sponsorship and product placement (if allowed) which should be a matter for the industry co-regulator(s).

There is however very little hard information on which to base conclusions in this area. In particular, we have no information readily available about the current size and development of the UK market in video-on-demand advertising and how it splits between adverts contained within programmes and adverts which accompany the service.

That being so, it is also difficult to estimate the costs to the regulators, whoever they may be, of dealing with complaints arising from video-on-demand advertising and the other regulatory functions which they will need to perform.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Annexes

Legal Aid

There might be an impact on the legal aid budget if a supplier of video-on-demand services were to seek legal aid in order to challenge a decision by the industry co-regulator in the Courts. The Government however considers that the likelihood of a provider qualifying to receive legal aid is very low.

Sustainable development

There will be no impact on sustainable development from the requirements of the Directive or the options set out for regulating video-on-demand services.

Carbon assessment

There will be no impact on carbon emissions from the requirements of the Directive or the options set out for regulating video-on-demand services.

Other environment; health; race, disability and gender equality; human rights

Implementation of the Directive in the UK, using any of Options 1, 2 or 3 would have marginal benefits in terms of each of these areas. In each case, that is because the Directive sets out standards applicable to the advertising and programme content of video-on-demand services.

In terms of advertisements on video-on-demand services, Article 3e of the AVMS Directive requires that they do not prejudice respect for human dignity, or include or promote discrimination based on sex, racial or ethnic origin, disability or sexual orientation. It also prohibits all advertising for tobacco products and advertisements which encourage behaviour which is prejudicial to health and safety or grossly prejudicial to the environment.

Article 3b requires that video-on-demand services do not contain any incitement to hatred based on race, sex, religion or nationality.

Implementation of the Directive in the UK will mean that video-on-demand services provided in this country will be required to abide by all these standards. That is not to say that these services currently contain content which infringes the AVMS standards – there is no such evidence. There is however no legal mechanism specifically applying to video-on-demand which requires these services to abide by the Directive's standards.

Rural proofing

There will be no impact on rural issues from the requirements of the Directive or the options set out for regulating video-on-demand services.