

PART 6 – FULL LIST OF QUESTIONS

The Government welcomes views on all the questions listed here and on any other issues raised by this consultation document.

Scope - Scheduled television broadcasting services

1. Does the Communications Act 2003 need to be amended in order to ensure that it covers all scheduled television services within UK jurisdiction regardless of the platform over which they are provided? If so, how?

Scope - On-demand audiovisual media services

2. Do the proposed definitions to be included in the Communications Act capture all the relevant elements of the definition of an on-demand audiovisual media service in the AVMS Directive?
3. Are there any services which you think should fall within the scope of regulation according to the Directive, but which the proposed definitions to be included in the Communications Act might exclude?
4. Are there any services which you think should fall outside the scope of regulation according to the Directive, but which the proposed definitions to be included in the Communications Act might include?
5. Is the concept of "general control" appropriate for determining the person or organisation subject to regulation in respect of a particular video-on-demand service?
6. If the provider of an 'aggregated' video-on-demand service has control over some elements of another video-on-demand service to which it provides access, to what extent and in what circumstances should the regulatory responsibility for that other service remain with its original provider and to what extent and in what circumstances should it transfer to the provider of the 'aggregated' service?
7. If an 'aggregated' video-on-demand service provides access to a video-on-demand service from outside the EU, should the provider of the 'aggregated' service have regulatory responsibility for the non-EU service? If not, what other options are there for ensuring that the UK can meet its obligations under the Directive in respect of the non-EU service?
8. What other types of additional content might video-on-demand services offer or provide access to? Do you envisage any difficulties in determining whether a service provider has general control over such content?
9. Is it appropriate to treat scheduled and on-demand parts of the same overall service differently for regulatory purposes? Do you envisage any difficulties in identifying the boundaries between the scheduled and on-demand parts of the same overall service and/or in making different parts of the same overall service subject to different regulatory requirements and different regulatory bodies?

Regulatory System for on-demand audiovisual media services

10. Do you agree that the criteria at paragraph 9 (of Part 3A) 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?

Advertising in on-demand audiovisual media services

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 on-screen 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?

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?

Product Placement

26. Should product placement be prohibited by law? Please explain the reasoning behind your preference.
27. Should any such legal prohibition allow for Ofcom and the co-regulator(s) of video-on-demand services to permit product placement in some or all of the programme genres specified by the AVMS Directive (feature films, television films and series, sports and light entertainment programmes)?
28. What advantage would there be in permitting product placement in any or all of the specified genres? If so, which genre(s), when and why?
29. If product placement were permitted, how could audiences and regulators be assured that editorial integrity had been preserved, as required by the Directive?
30. How could “undue prominence” be avoided, given the commercial imperatives for audiences to recognise the products placed?
31. Should the same rules apply to both television broadcasting and on-demand audiovisual media services? If not, how should they differ and why?
32. Should prop placement continue to be permitted?
33. Should there be a specific set value above which prop placement is subject to the Directive’s rules on product placement? If so, what should it be?
34. What other ways are there of ensuring that the UK meets the Directive’s requirement that prop placement above a ‘significant value’ must be treated as product placement? Which test is best and why?
35. If there is to be a set value for this purpose, should it be set by the Government in legislation, or by Ofcom (for television broadcasting) and the video-on-demand co-regulator(s)?
36. Should product placement continue to be permitted in programmes acquired from outside the UK and in films made for the cinema? If not, why not and how could such a ban be made effective in practice?

37. How should product placement be signalled to viewers?
38. Should the rules on signalling be set by the Government in legislation or by Ofcom (for television broadcasting) and the video-on-demand co-regulator(s)?

Non-EU satellite channels uplinked from the UK

39. Should there be arrangements of some kind to regulate broadcasts from non-EU broadcasters which are uplinked from the UK?
40. What legal powers should the Government or Ofcom have in order to ensure that there can be effective intervention if unacceptable content is broadcast by a non-EU channel uplinked from the UK?
41. What responsibility, if any, should uplink providers have in relation to the channels they uplink?
42. Are there any other options, besides those described in this document, which would achieve the objective of ensuring that non-EU satellite channels uplinked from the UK comply with the requirements of the Directive and enabling the Government or Ofcom to take appropriate action against those that do not?

Impact and Competition Assessment Related Questions

The Government would welcome responses to these questions in relation to each section of this consultation document: scope; regulation of programme content and advertising in on-demand audiovisual media services; product placement; and satellite television broadcasts from outside the EU.

43. What are the key technical and market developments and the likely future impact of these, including emerging strategic and business models?
44. What is your assessment of the degree of “footlooseness” of business activity in the sectors covered by the Directive, including the potential for operation from non-UK and non-EU locations and incremental costs for such operations?
45. How will the options proposed impact directly and indirectly on the number and range of service providers?
46. How will the options proposed limit the ability of service providers to compete and reduce the incentives for providers to compete vigorously?
47. How will the options proposed affect technological innovation within the relevant markets?