

BBC Trust response to the DCMS consultation on proposals for implementation of the Audiovisual Media Services Directive

Overview

The BBC welcomes the opportunity to respond to the UK government consultation on the implementation of the Audiovisual Media Services Directive. This response is submitted by the BBC Trust on behalf of the BBC as a whole.

The BBC Trust currently licenses and regulates the content standards of 28 services including the BBC's public service video on-demand services. In linear broadcasting Ofcom regulates both the BBC's public services, with regard to Relevant Programme Code Standards¹, and licences and regulates commercial channels carrying BBC content through commercial arrangements, such as UKTV and Dave, in accordance with the Ofcom Broadcasting Code. The BBC believes that a regulatory system for video-on-demand involving the BBC Trust, Ofcom and any new co-regulator, can be put in place to the benefit of audiences. How this could work, and the differences in application between the BBC's public services and commercially-carried content is set out in more detail in the rest of this response.

It is possible that the Memorandum of Understanding between the BBC Trust and Ofcom may need to be revised to clarify regulatory jurisdiction issues arising out of the implementation of the Audiovisual Media Services Directive if Ofcom are given a regulatory role. The BBC Trust should also similarly clarify relations and jurisdiction with the Advertising Standards Association and any other possible regulatory body responsible for regulating video on-demand for the commercial sector².

The BBC has provided services on the internet since the creation of bbc.co.uk in 1997. Over this period, like all other BBC services, online content has been subject to the provisions of the BBC Editorial Guidelines (bbc.co.uk/editorialguidelines). These also cover the BBC on-demand iPlayer service (launched in 2007). Online services are also subject to the provisions of the BBC's online services guidelines (bbc.co.uk/guidelines/editorialguidelines/onguide/).

In addition, the BBC has developed a content labelling system ('G' for guidance) between 2003 and 2006 and has since worked with other Public Service Broadcasters to implement this as an industry-wide system. 'G' for Guidance is currently used on the BBC iPlayer, ITV.com and 4oD. The BBC has also played an active role in various industry forums which have published best practice guides for content labelling, media literacy and the protection of minors. The BBC has been an affiliate member of the Association for Television On Demand (ATVOD) since 2006.

¹ These are set out in Clause 46 of the BBC Agreement

² The BBC Trust also has a role in regulating the BBC's commercial on-demand services, which may require an MOU with other regulators to ensure the right outcome for consumers. This is discussed in the main response below.

Scope – Scheduled television broadcasting services

Question 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?

The BBC believes that DCMS is best placed to decide on the need for new regulation.

Scope – On-demand audiovisual media service

Question 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?

The BBC believes that the definitions proposed by the Government 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.

The BBC supports the Government's aim to draw into the UK regulation a narrow range of services falling within the scope of the AVMS Directive. We agree that the scope of the AVMS Directive should cover scheduled broadcasting services and video on-demand services. There is no need to extend the regulation to a wide range of audiovisual services, in particular user generated content.

Questions 3 and 4:

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? And;

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?

The BBC agrees with the Government's view that services which are not covered by the definitions in the Directive should not fall within the scope of regulation.

Question 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?

The BBC agrees with the Government that the concept of "general control" works effectively in a broadcast environment where services are licensed and where licensing is conditional on the applicant putting in place adequate safeguards and controls for the purpose, for example, of viewer protection.

Outside the scope of licensable services issues become more complex. A creator and provider of on-demand content would have control of the content it provides to a third party supplier, but not necessarily over the way in which this content is then made available to the public by that third party. Of course the content provider may seek to exert some control through contractual conditions about context, accessibility and viewer protection systems such as, for example, PIN control, so is able to maintain legal recourse in the event of a contractual breach, if not the ability to prevent any breach in the first instance.

Currently, BBC content is available on-demand in a number of ways:

- Through a BBC public service - mainly through the iPlayer service. Here, as the consultation paper notes, the concept of general control is adequate in identifying the BBC

as the operator responsible for the service. All the programmes on iPlayer have been previously broadcast as part of the BBC's linear services. The BBC operates a 'public service window' arrangement whereby content first broadcast on a linear public service TV channel remains available to licence fee payers free of charge for a certain period of time after first broadcast. In the BBC's case, we therefore expect that the BBC will be deemed to exercise general control over services provided directly under the BBC brand within this 'window', and so be regulated by the BBC Trust.

- Via a commercial service, before the 'window' has expired – It is possible for commercial operators to provide access to BBC public service content during the 'window'. This could, for instance, involve links directly through to the iPlayer from a third party site. The commercial operator in this instance would be a portal to BBC content, as the content itself would be provided through a BBC service and be BBC-branded. We therefore expect that the BBC will be deemed to exercise general control, and so be regulated by the BBC Trust.
- Through a commercial service, before the 'window' has expired – a slight variation on the 'via' option above involves on-demand services being provided free of charge alongside linear TV, such as through Tiscali or BT. Services such as these might offer, for instance, the BBC One schedule for seven days free of charge beyond initial broadcast (subject to contractual arrangements). In these instances the BBC would not have general control over how the content was broadcast. As an example, content originally broadcast on linear TV post-watershed should properly be provided on-demand with pin protection. A technical error resulting in a programme being made available without pin protection would not be in the control of the BBC. Any complaints of a technical nature would therefore properly be addressed to the provider in the first instance, overseen by the new co-regulator³, rather than the BBC or BBC Trust.

However, in this example, the same content will also be available on-demand free of charge from the BBC, potentially via iPlayer and bbc.co.uk, at the same time. We therefore feel it is appropriate that the BBC should address any complaints about the content (as opposed to technical failure), as would be the case for the same content made available by the BBC online or via linear channels. To avoid unnecessary complexity for consumers, we believe this split is best achieved through a memorandum of understanding between the BBC Trust and the new co-regulator, so that consumers have a single point of contact for the initial complaint (the new co-regulator) but complaints can be directed to the relevant body.

- Through a commercial service after the 'window' has expired –BBC content may be provided in the future through a commercial service both ad and pay-per-view funded, beyond the initial public service 'window' discussed above. Although all BBC content would previously have been broadcast as part of the BBC's linear services, it is the commercial aggregator that would have "general control" of all content on the platform. The proposed new co-regulator, would therefore be responsible for regulating the service in terms of technical and content standards, and the ASA for all advertising content. However, the BBC also lays down rules regarding online services e.g. to exclude types of advertising which we believe could raise issues over our impartiality, such as political advertising. We

³ The BBC recognises that a number of different regulatory models are being currently discussed, and responds to this debate in questions 17 and 18. For simplicity of drafting, the BBC's response refers to 'the new co-regulator', DCMS's preferred solution, throughout.

would seek to ensure that agreements with commercial partners satisfy those specific requirements.

For all the variations set out above it would then be important to ensure that arrangements are put in place among the different bodies to govern jurisdiction and avoid overlap, based on the model of the MOU between the BBC Trust and Ofcom. As discussed above, while seeking a solution that is simple for consumers is key, some complaints regarding BBC content might, in some instances⁴, properly be passed to the BBC Trust, while complaints regarding only advertising might be passed to the ASA.

Question 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?

For a linear television service, the broadcaster has total control over its content. For example, both the scheduling of programmes and the content of programme trailers are under the broadcaster's control. In an aggregated on-demand service, content could be provided by a broadcaster, but how the content is presented would be under the control of the aggregator.

Ultimately the aggregator would have the ability to remove any offending content, as well as being responsible for the way in which the public searches and accesses items of content. The content provider, while responsible for the programme itself, would lack the ability to remove content in the event of a complaint. It is therefore appropriate to deem that control lies with the aggregator, and that therefore the regulatory responsibility lies with the new co-regulator.

For example, if the BBC provided an episode of Dr Who to an aggregated service provider which then presented that programme alongside harmful content, the responsibility should be borne by the aggregated service provider and not the BBC. Should any issues relating to the specific content of the episode of Dr Who arise it is the aggregator who has the ability to remove the content and therefore has control. If the BBC should provide content to an aggregator who then places advertising around it, the aggregator would be responsible for the advertising content.

Question 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?

This is not an area of direct concern to the BBC. It would seem that insofar as access to content or services from providers established outside the EU is granted by an aggregator established within the EU, under the terms of an agreement or otherwise, the aggregator established within the EU would be deemed to exercise control unless it was clearly impossible for it to do so.

⁴ For instance, it may be possible for complaints about the same programme to be received relating to linear broadcast, iPlayer and a commercial operator within a very short time frame. This could potentially result in more than one regulator being involved in considering a similar complaint. This should be resolved through the MOU.

Question 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?

Any additional content carried by BBC video-on-demand services would comply with the BBC Editorial Guidelines and online services guidelines. The BBC would have general control and would therefore be regulated by the BBC trust.

This may be slightly more complex for commercial operators, but the BBC would not envisage significant difficulties in determining whether a service provider has general control. It would seem appropriate that the same provider would have general control over both on-demand content and other types of content carried on the same service.

Please see also answers to questions 5 and 6.

Question 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?

The BBC believes that it is important that arrangements are in place between the different regulatory authorities in the UK to avoid any difficulties which may arise regarding the regulatory treatment of the scheduled and on-demand parts of the same overall service.

For example, a pay TV operator may provide both linear television channels (regulated by Ofcom) and on-demand services (overseen by the new co-regulator). The two regulatory bodies would need to establish an agreement to avoid double-jeopardy where Ofcom considers a complaint about the content of a programme broadcast linearly and the on-demand regulator considers the same complaint because the programme has subsequently been viewed on-demand a few hours after that original transmission.

An MOU already exists between the BBC Trust and Ofcom which seeks to reduce the risk of double jeopardy. Similar arrangements would need to be made between all the co-regulatory and regulatory bodies involved.

Regulatory System for On-Demand Audiovisual Media Service

The BBC Trust currently regulates all BBC activities including on-demand services such as the BBC iPlayer. This is a regulatory system which exists to represent the licence fee payer and was established following public consultation and parliamentary scrutiny. The BBC believes that a regulatory system for video-on-demand involving the BBC Trust, Ofcom and any new co-regulator, can be put in place to the benefit of audiences. How this could work, and the differences in application between the BBC's public services and commercially-carried content is set out in more detail below.

Question 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?
The BBC believes that under "Complaints handling, appeals and enforcement" it should be specified that this criterion will include avoiding or minimising regulatory "double jeopardy".

Question 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.
No suggestion at this point.

Question 12:

Should service providers be subject to a membership, prior approval, notification or general conditions regime?

The BBC believes that commercial providers, including those who carry BBC content, should be subject to either a membership or general conditions regime, to ensure flexibility in a relatively new and rapidly developing market. The UK Government must ensure that, once the regulatory system for AVMS has been established, the appropriate regulatory bodies work together to ensure that there are as few gaps in implementation as possible, including agreeing MOUs where necessary.

Question 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?

For those services where the BBC is deemed to have general control, the BBC Trust is best placed to exercise responsibility for interpreting the legislative definitions and determining which BBC services are subject to the regulatory framework (working in close partnership with Government, and Ofcom).

For services where the BBC is not deemed to have general control, the BBC believes it would be appropriate for the co-regulator to be responsible.

Question 14:

Who should be responsible for developing and maintaining a standards code and any additional guidance?

For all BBC content and services, including our on-demand services, BBC Editorial Policy draws up the BBC Editorial Guidelines which are approved by the BBC Executive and BBC Trust.

The BBC Editorial Guidelines are revised every three to five years or so. A new set of Editorial Guidelines will be published, (possibly at the end of 2009 or the start of 2010), and views will be taken from across the Corporation as to how the guidelines may best be written to address evolving market and technology conditions and viewer expectations. The new guidelines will be subject to the approval of the Trust.

The BBC's Editorial Policy department also drafts guidance notes on a range of subjects where there is a need for further detailed advice beyond the BBC Editorial Guidelines and we would envisage that detailed guidance would be written in this area. These supplementary guidance notes are drawn up and revised as required and are approved by the Editorial Standards Board of the BBC Executive.

The BBC believes that any standards code, developed by the co-regulator, must be clear in its scope, so that programme makers and distributors can effectively be trained in its requirements. The BBC previously used its experience in this area to work with ATVOD when it was developing its Code of Practice. The BBC will again look to work with industry and any new co-regulator to aid in developing a standards code and any additional guidance.

Additional (non-binding) guidance beyond a standards code, for service and content providers, should be a matter for industry in consultation with the new co-regulator.

As the on-demand industry continues to develop, the BBC believes that it is vital that this flexible arrangement should be maintained.

Question 15:

Who should be responsible for monitoring compliance, investigating complaints and reviewing any breaches of the code?

The BBC has established compliance and complaints systems for all its linear and on-demand services, including referral to the BBC Editorial Complaints Unit and the BBC Trust. The BBC believes that for services where the BBC is deemed to have general control these arrangements should continue.

With regard to BBC content provided on a commercial basis by a third party (subject to an MOU) the BBC believes that the co-regulator should be responsible for monitoring compliance, investigating complaints and reviewing any breaches of the code regarding both content and the way in which the public searches and access items of BBC originated content.

Regarding the responsibilities of the new co-regulator in this area, the BBC believes that it should be for that co-regulator to be responsible for monitoring compliance, investigating complaints and reviewing any breaches of the code with regard to the commercial sector.

We suggest that monitoring should be light touch and should be predicated on examining an issue once identified by the regulator usually through the medium of complaints or the articulation of public concern.

Question 16:

What sort of sanctions should apply and who should apply them?

As far as BBC public services are concerned, any sanctions should continue to be applied by the BBC Trust. The type of sanctions should be in line with current practice (e.g. on-air/on-demand/online findings, right to take away ability to provide service, direction to remove, publication of all findings).

For commercial services, the co-regulator should be responsible for determining which sanctions should apply and when⁵. The BBC believes these sanctions should be similar to those listed above, and not include fines.

Question 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?

The BBC believes that the Trust should be the primary regulatory body for the BBC. The Trust would work in close co-operation with Ofcom, the ASA or an appointed industry regulator. Under the BBC Charter, the Government has ultimate oversight over diligence and systemic failure. This arrangement should not change following implementation of the AVMS Directive.

The BBC believes it is a matter for DCMS to decide what backstop arrangements are put in place alongside any new co-regulator.

Question 18:

In the light of all these considerations, which option do you prefer and why?

The BBC believes that the BBC Trust provides an effective 'one-stop shop' regulatory regime for all the BBC's public services including iPlayer and bbc.co.uk. This system presents the double advantage of transparency and flexibility. It has served the public well so far and should not change following the implementation of the AVMS Directive.

BBC content provided by commercial providers should be regulated by the new co-regulator, subject to the issues to be resolved by an MOU discussed throughout, as would be the case for all non-BBC commercial content, to ensure the optimum outcome for audiences.

The BBC has played an active role in helping to develop ATVOD as a responsible industry-led regulatory body. We intend to continue working with ATVOD maintaining our Affiliate Member status in the future. For this reason, the BBC would endorse ATVOD as a suitable co-regulatory body for the wider on-demand industry. However, the BBC will cooperate with any other industry co-regulatory body in the same way.

⁵ The MOU should seek to clarify which sanctions apply in the event a complaint is received by the co-regulator but determined under the MOU to be properly addressed by the BBC

Advertising in on-demand audiovisual media services

Questions 19:

Should the controls on advertising in video-on-demand services cover:

- advertisements which appear on-screen 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?

Questions 20, 21 and 22 and 23:

Should there be only one co-regulatory body for advertising on video-on-demand services?

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?

Should the Advertising Standards Authority be the body, or one of the bodies, which regulate advertising on video-on-demand services?

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 Advertising Standards Authority (ASA) has provided an easy one-stop solution to the regulation of advertising standards in the UK for a long time. Because of its effectiveness and the recognition it has among the public, the BBC believes that the ASA is best placed to regulate advertising on video-on-demand services.

The Trust would continue to play a general oversight role for BBC services which are part of a commercial aggregated offer. This is to ensure that any advertising would be consistent with, and not damaging to, the BBC brand and reputation.

Question 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?

By virtue of its Charter obligations and its special status as a publicly funded PSB, the BBC would not carry product placement in its programmes. In principle, it is our view that as an integrated part of the editorial content of the programme, product placement – if allowed – should be regulated by the body that regulates programme content. This is currently the case for both product placement and product prominence in linear broadcasting. To use a different model in the on-demand environment would lead to confusion.

Question 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?

Sponsorship arrangements relate directly to issues surrounding the editorial integrity of a programme and are best dealt with by the body responsible for the regulation of content, as is currently the case for linear broadcasting. For BBC public services this should be the Trust.

Product Placement

Because of its Charter obligations and its public funding through the licence fee, the BBC Editorial Guidelines prohibit product placement on all BBC services, including On-Demand and other Audiovisual Media services. Therefore, the BBC is not well placed to respond to questions 26 to 31.

Question 26:

Should product placement be prohibited by law? Please explain the reasoning behind your preference.

Question 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)?

Question 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?

Question 29:

If product placement were permitted, how could audiences and regulators be assured that editorial integrity had been preserved, as required by the Directive?

Question 30:

How could "undue prominence" be avoided, given the commercial imperatives for audiences to recognise the products placed?

Question 31:

Should the same rules apply to both television broadcasting and on-demand audiovisual media services? If not, how should they differ and why?

Question 32:

Should product placement continue to be permitted?

Question 33:

Should there be a specific set value above which product placement is subject to the Directive's rules on product placement? If so, what should it be?

Question 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?

Response to questions 32-34

Like other broadcasters, the BBC sources props from approved prop houses, some of which are on loan, under conditions for which guidance is clearly published on our website. Some payment is always made for the loan or supply of the products, unless there are exceptional circumstances. Supply of props in this manner has no impact on editorial choices and it should be allowed to continue.

The role of props in a production is not comparable to product placement. Any threshold in terms of "significant value" leading to the identification of what is product placement and what is prop placement should reflect the auxiliary value of props compared to the economic value of product placement. However, the BBC believes it would be difficult to set a specific sum for this purpose, as many props may have an indeterminate value, for example antique vases.

Question 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)?

Question 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?

It would be difficult for a UK broadcaster to know the full extent of any product placement in a programme acquired from outside of the UK or in a film. In addition, as long as the broadcaster does not benefit from product placement, and standards codes rules concerning undue prominence are complied with, there is no reason why it should be prohibited in such cases.

Question 37:

How should product placement be signalled to viewers?

The majority of BBC programmes would not include product placement. The BBC does acquire feature films which are likely to include product placement. However, this is not always known to the BBC. In addition, film audiences are accustomed to the frequent presence of product placement in films. No special signalling is involved in the projection of feature films in theatres. Accordingly, it should not be necessary to signal product placement in acquired feature films. The BBC may also acquire programming from abroad, such as Heroes and Medium, which may also contain some product placement. Again, this is not always known to the BBC. Audiences are also likely to be accustomed to product placement in this context and so accordingly it should not be necessary to signal product placement in programming acquired from outside the EU.

Question 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)?

If, despite the BBC's position as set out in question 37, DCMS decides rules on signalling are required here, the BBC believes that the rules for the BBC's on-demand public services should be set out by the BBC Trust. Rules for commercial services should be determined by the new co-regulators.

Satellite Television Broadcast from outside the EU

The BBC is not well placed to respond to this section of the consultation.

Question 39:

Should there be arrangements of some kind to regulate broadcasts from non-EU broadcasters which are uplinked from the UK?

Question 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?

Question 41:

What responsibility, if any, should uplink providers have in relation to the channels they uplink?

Question 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

Question 43:

What are the key technical and market developments and the likely future impact of these, including emerging strategic and business models?

Convergence will become a reality as consumers embrace digital communication devices and services. The audiovisual industry will need to address the proliferation of increasing number of communication devices by delivering content over a number of networks and devices.

The success of the BBC iPlayer has demonstrated that audiences have considerable appetite for video on-demand services on PCs, cable and on mobile phones. Since its launch on 25 December 2007, the BBC iPlayer has received over 176 million requests to stream or download TV programmes.

Ofcom's Communications Market 2008 report states that consumers of all ages are showing a growing interest in accessing audiovisual content online, 17% of those with broadband have watched TV over the internet, up by eight percentage points on 2006 – and this is particularly apparent among younger people. Young people have also embraced user generated content. The ability of the UK broadcasting sector to address the opportunities and challenges of convergence will depend among other things upon the vitality of its public service broadcasters (BBC, ITV, Channel 4 and 5).

Over the next few years, the licence fee funding of the BBC will grow marginally and the traditional advertiser funded PSBs face pressure from both the continuing growth in multi-channel television and online advertising.

We anticipate that the current trends will continue as equipment manufacturers produce the next generation of laptop computers and mobile phones which permit accessing the Internet or broadcast content on the move: the mobility, greater personalisation of content and participation that these devices permit is likely to increase the significance of these platforms as a means of consuming and producing content over time.

Question 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?

Digital technology leads to lower barriers to entry into the audiovisual service market and increased mobility. Potentially, this means that audiovisual service providers enjoy increasing flexibility in choosing where to establish their operation. However, the range of services covered by the Directive is likely only to include effectively television and television on-demand rather than any service with an audiovisual element. This is likely to cover providers many of whom are largely rooted in the countries where they operate and who would have little incentive to relocate.

Question 45:

How will the options proposed impact directly and indirectly on the number and range of service providers?

Question 46:

How will the options proposed limit the ability of service providers to compete and reduce the incentives for providers to compete vigorously?

Question 47:

How will the options proposed affect technological innovation within the relevant markets?

Given its status as a publicly funded PSB governed by Royal Charter, the options proposed would only have a moderate impact on the BBC. Across the industry at large, a light touch co-regulatory regime affecting a clearly identified range of services may be helpful in providing consumers with more regulatory certainty in relation to on-demand services. This may help promote confidence and contribute to the take-up of new services.