

## CLEARCAST

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### **Clearcast response to The Audiovisual Media Services Directive – Consultation on proposals for implementation in the United Kingdom**

#### **About Clearcast**

Clearcast is the company responsible for the pre-transmission examination and clearance of television advertisements. As part of their licensing agreements with Ofcom, broadcasters are required to ensure that advertisements are compliant with the TV Advertising Code. Clearcast checks advertisements before transmission on around 170 UK terrestrial and satellite channels. Clearcast is owned and funded by eight commercial broadcasters all of whom are represented on Clearcast's board.<sup>1</sup> Other broadcasters using Clearcast for clearance pay individually for Clearcast's services.

Pre-production scripts and finished commercials are considered against the BCAP Television Advertising Standards Code and Clearcast's own Notes of Guidance.

Clearcast also manages the attribution service which standardises and validates attribution data for all BARB reported commercial copy transmitted on TV in the UK and reports attribution for transmission by UK broadcasters in the Republic of Ireland.

#### **Summary of this response**

Clearcast has in its response to the consultation emphasised the importance of ensuring consistency between media where the consumer experience may be seamless. Our comments are confined to addressing the Directive's approach towards advertising in audiovisual media services.

Our recommendation is therefore to ensure that there is consistency between existing advertising codes and their enforcement. This can best be achieved with an approach where the responsibility of compliance follows the linear system whereby content providers take responsibility for the content available on their own branded service.

Finally, it is our opinion that the regulation of advertising in video-on-demand should be enforced within the existing framework for advertising regulation, i.e. by the Advertising Standards Authority.

#### **Responses to the questions raised on this consultation**

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<sup>1</sup> Clearcast is owned by ITV, GMTV, Channel 4, five, BSkyB, Turner, Viacom Brand Solutions and IDS





It is Clearcast's view that advertising regulation, within the remit of the AVMS Directive, should be neutral with respect to the medium when the same service can be accessed through different media, such as the Internet and television.

**Scope – On-demand audiovisual media services**

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?*

Clearcast only has a view with regard to the remit of the AVMS with regard to advertising.

The consideration for the placement of an advertisement for a linear service and an on demand service is very different. Clearcast provides advice for linear services with regard to timing restrictions but also other scheduling restrictions. Such scheduling restrictions are for example for advertisements to not be shown around certain kind of programmes (children, news, religious programmes, etc). Such advice would be relevant also for on-demand services.

Timing restrictions will only be relevant in scheduled transmissions of programmes. The placement of advertisements in on-demand services will need to rely on information concerning the content of the advertisement, such as suitability for children, violence, nudity, etc, so that the advertisement can be placed in a suitable context.

Advertisements with scheduling restrictions would need to be placed in such a suitable context. A programme with pre-, mid- or post-rolls containing advertisements given timing restrictions, will in our opinion, either need to be made available on demand only after the time of the timing restriction, or alternatively and more feasibly, that the advertisements are placed in a suitable context.

The placement in a suitable context is likely to be a process that can only happen when content is made available on-demand; it could otherwise be a disproportionate measure to make a media owner consider both linear and VoD scheduling restrictions for advertisements in its linear broadcast.

Clearcast is therefore of the opinion that a media owner can only be held responsible for services provided through the media that they are themselves responsible for, i.e., where they have actively selected individual programmes or, in relation to advertisements, those adverts which the media owner actively chooses to place within a programme and obtains direct remuneration from.

*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?*

It is Clearcast's understanding that the AVMS directive's objective is to place minimum content standards on all "TV like" services.

For the areas that fall within the remit of the Directive, it is our view that one should seek to ensure that minimum content standards are maintained and consumers are provided with an adequate level of regulatory consistency between scheduled and on-demand services. There are certain aspects with this that can cause difficulties, as we have outlined in our response to question 6.

We would like to point out that a system with scheduling restrictions based on audience restrictions probably provide better protection for viewers than timing restrictions, as this allows for better targeting of the scheduling restrictions.

We are similarly of the opinion that not only should the rules be of the same standard, but also the enforcement of the rules. The Advertising Standards Authority has demonstrated that it can effectively enforce the TV Advertising Standards Code for scheduled services, and has since 2001 regulated video-on-demand through the CAP Code. We therefore recommend that a similar arrangement is put in place through BCAP for the AVMS directive.

Clearcast is therefore of the opinion that it is necessary to have a certain but minimal difference in regulation, to reflect the difference in the services. It is however, our view that there should be as much consistency between linear and on-demand regulation and their application and that the existing system for linear services could be reflected for on-demand.

***Part 3A – A regulatory system for on-demand audiovisual media services***

*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?*

Clearcast has decided to answer both questions 13 and 14 together and will only comment on the aspects related to advertising.



It is our view that the regulation of video-on-demand, independently of the media it is accessed through, should, as far as practically possible, offer an equal level of protection for viewers as for linear TV broadcasts. In order to ensure consistency in the rules and their application, Clearcast believes the most effective way of achieving this, would be to reflect the current co-regulatory arrangements in place for broadcast advertising.

The Advertising Standards Authority has demonstrated that it can effectively deal with complaints on broadcast advertisements, ensuring a level playing field and an appropriate level of protection for consumers.

To ensure that viewers experience no significant difference in the advertising standards between linear and on-demand services, it is Clearcast view that the Broadcast Committee of Advertising Practice should be responsible for the code also for video-on-demand, in consultation with Ofcom.

### ***Part 3B - 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 onscreen as a result of the user accessing a particular video-on-demand service?*

It is Clearcast's view that the purpose of the AVMS Directive is to contribute to ensure consistency in advertising regulation. We believe that the partial regulation of the Internet by extending the remit of the AVMS to advertisements, which appear onscreen as a result of the user accessing a particular video-on-demand service, could lead to a discrepancy in the advertising standards and its enforcement. This is a medium where consumers' experience will be no different between the advertisements inside and outside of the remit of the directive.

Clearcast would therefore recommend that the AVMS directive is applied to advertisements which appear onscreen as a result of the user accessing a particular video-on-demand programme.

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

Clearcast support Option A – to allow the Advertising Standards Authority to continue to be the one-stop shop for advertising complaints to also cover video-on-demand and should be the only body responsible for advertising regulation in on-demand services pursuant to powers delegated by Ofcom.



As we have argued above, we are supporters of an approach which builds on the existing arrangements for advertising regulation, which contributes to ensuring continuity and consistency. The existing system has demonstrated that it provides effective protection for consumer and help maintaining consumers' confidence in advertising.

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

Clearcast is positive, as outlined above, to extending current practice to the remit of the AVMS directive. The Advertising Standards Authority should investigate complaints and carry out monitoring of advertisements on the basis of the relevant code for on-demand services.

Clearcast intends to extend its current services to provide compliance checks for advertisements destined for on-demand services. The current pre-clearance is currently offered to meet a license requirement, while the compliance check would be available to media owners wishing to check compliance on a voluntary basis. The nature of the service may need to be adjusted according to the conclusions of this consultation. By taking up the service, it is expected that media owners can demonstrate to Ofcom that they have taken the necessary steps to ensure due diligence to ensure compliance with the advertising code.