



## Response to Public Consultation on Implementing the EU Audiovisual Media Services Directive

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### Introduction

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The following represent the comments of Joost UK Limited (“**Joost**”) in response to the public consultation issued by the Department of Culture, Media and Sport (“**DCMS**”) and Ofcom with respect to the UK’s implementation of the EU Audiovisual Media Services Directive (the “**Directive**”).

#### About Joost

Joost is a London-based company, which operates an online video-on-demand (“**VOD**”) service under the name “**JOOST**”.

Joost users have on-demand access to thousands of hours of legitimate, professionally-produced video content, ranging from music videos, documentaries, animation, movies, sci-fi, drama and sports highlights. Content partners range from multinational companies such as Viacom, CBS and Universal Music Group, to much smaller independent producers and aggregators.

Joost was originally launched in October 2007 as a downloadable software application, with content delivered over a peer-to-peer architecture. Joost has recently re-launched as a web based service, allowing users to view content in their browser at [www.joost.com](http://www.joost.com).

The service is advertising supported, and free to the user.

Joost is the latest venture by Janus Friis and Niklas Zennstrom, the entrepreneurs behind the music service Kazaa, and the revolutionary voice over IP service, Skype. Other investors in Joost include Viacom, CBS, Index Ventures, Sequoia Capital and Mr. Li-Ka Shing. Joost has offices in London, New York and Leiden (The Netherlands).

#### Executive Summary

As an on-demand service established in the UK, Joost has a clear interest in the implementation of the Directive by the UK Government. Joost’s position on the various issues can be summarised as follows:

- Implementation must be in accordance with the Government’s Principles of Better Regulation, and therefore legislation must only be introduced or amended to the extent it is absolutely necessary to fulfill the Government’s obligations under EU law.
- With respect to the scope of regulation, it is essential that the definition of an audiovisual media service incorporates and reflects accurately all of the relevant elements of the Directive.
- It is important that the Government does not create arbitrary distinctions between different categories of on-demand service based on the nature or origin of elements of their content offering.

- Given the low barriers to entry, the Government should be wary of the number of on-demand services that might potentially fall within scope.
- The Government should not seek out a regulatory target based on arbitrary considerations or convenience. Where no single person or entity meets all relevant criteria, forbearance may be the correct course.
- Regulation that is too onerous, or too broad in scope, will lead to service providers (particularly online service providers) establishing themselves outside of the EU. The services themselves will be unaffected, as they will be able to reach UK consumers from anywhere in the world, but the UK will lose the benefit of their economic activity, and the consumer protection that the Directive is intended to introduce will also be lost.
- Joost's preferred model for regulation would be co-regulation by an industry co-regulator, with Ofcom having statutory backstop powers. Any appointed co-regulator must be representative of industry as a whole.
- Sanctions with respect to on-demand content should ordinarily be limited to a requirement to take down the offending content, with financial or injunctive sanctions being reserved to Ofcom only in the event of severe, repeated or systemic failures.
- Advertising on on-demand services should be regulated by the ASA.
- Product placement and prop placement should be regulated by the industry co-regulator, and should be permitted to the fullest extent possible.
- It is not appropriate to introduce regulation of product/prop placement for on-demand services in the absence of any demonstrable consumer harm or other adverse effects from the current lack of regulation.
- Audiences will determine when product placement reaches an unacceptable level.
- The concept of undue prominence should be adjusted to reflect the commercial rationale behind product placement.

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## Response to Consultation Questions

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### **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?***

This question is somewhat ambiguous. It is not clear to Joost whether DCMS is asking in which respects the Communications Act 2003 should be amended, or by what means the Act should be amended.

With respect to the former, Joost has not conducted a legal analysis enabling it to comment on which aspects of the Directive, if any, unequivocally require UK legislation to be introduced or amended to ensure UK compliance with EU law. However, to the extent that the Communications Act can be interpreted as applying only to traditional broadcast television platforms (terrestrial, cable and satellite), then Joost believes this will need to be amended to ensure that it covers all linear services

The Directive makes a clear distinction between linear “television broadcasting” and non-linear “on demand audio visual services”, but without any reference to the underlying delivery technology. The use of the term “television broadcasting” is unfortunate as it brings to mind traditional broadcast technology (terrestrial, cable and satellite) when, in fact, the Directive makes no distinction with respect to the technology over which such services are delivered. It is also unfortunate that the defined terms chosen are not equal and opposite – “television broadcast” could better be defined as a “scheduled audio visual service” to distinguish it from an “on demand audio visual service”, or the terms “linear” and “non-linear”, which appear throughout the Directive, could be applied more specifically.

In any event, there is nothing in the Directive to suggest that its provisions should be applied to one delivery platform to the exclusion of another. Technologies are rapidly converging – a fact acknowledged by Recitals 10 and 11 of the Directive - and the enacting or amending legislation should reflect this.

With respect to the means by which the Communications Act should be amended, DCMS has stated that the Government will need to legislate in order to transpose certain requirements of the AVMS Directive into UK law. At the AVMS Stakeholders’ Meeting of 26 September 2008, DCMS representatives indicated that legislation is likely to take the form of an Order under the European Communities Act 1972, allowing the Government to change primary legislation – in this case, the Communications Act 2003 – in order to bring in these requirements. It was also noted that this Order could go forth in Parliament under either affirmative or negative resolution procedures.

As mentioned above, Joost has not conducted a legal analysis enabling it to comment unequivocally on any requirement to introduce or amend UK legislation. The Government, however, should confirm its commitment to following the Principles of Better Regulation in the implementation of the Directive at all levels and by whichever means is applied.

The five key Better Regulation Principles to which the Government has on previous occasions expressed its commitment are that any regulatory intervention should be:

- Transparent;
- Accountable;
- Proportionate;
- Consistent; and
- Targeted only at cases where action is needed

As regards introducing or amending legislation, this should only be undertaken to the extent that it is absolutely necessary to fulfil EU law. Should the Government’s own legal analysis – or that of other respondents – suggest that legislation is unnecessary, or that additional or amended legislation could be more targeted or proportionate, the Government should forebear from legislating and/or pursue a more targeted or proportionate approach accordingly.

If legislation is likely to be implemented by means of an Order introduced in Parliament, this should go forth under the affirmative and not the negative resolution procedure, in order to guarantee a parliamentary debate. The Directive’s extension of scope is a significant change to the regulation of

audiovisual media services in the UK, and debate under the affirmative resolution procedure will support the aims of Better Regulation to ensure appropriate scrutiny of new policy proposals, improve transparency and accountability, and effectively communicate regulatory changes.

There is, however, a major disadvantage of the route suggested by DCMS for implementing the Directive via an Order rather than primary legislation, in that Parliament cannot amend the statutory instrument; it can only be approved, annulled or withdrawn. The Government should make clear its willingness to withdraw and modify such an Order if, during its consideration, objections and/or alternatives are raised which, if addressed in a modified instrument, would better fulfil these regulatory principles. As DCMS is aware, the audiovisual media sector is undergoing rapid and continual change. An inflexible approach to legislation will work against the Government's aim to make it easier to change or remove regulation where beneficial, and to reduce the regulatory burdens of affected businesses.

### **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?**

Joost's response to question 1 indicates that we have not determined whether such definitions must be included in an amended Communications Act or other UK legislation, and we refer to the considerations discussed above with regard to the implementation of the Directive in any form.

Irrespective of whether the definition of an on-demand audiovisual media service is incorporated in UK legislation or applied through other means, all the relevant elements of the Directive must be taken into account – and reflected accurately. This is important since excluding relevant elements and/or inaccurately reflecting the provisions of the Directive could lead to the extension of regulation to a wider range of audiovisual services than is necessary or appropriate.

For example:

- Article 1(g) of the Directive defines an on-demand audiovisual media service, in part, in relation to “a catalogue of programmes selected by the media service provider”. Some or many on-demand audiovisual media services may not feature a “catalogue” of programmes, and/or the programmes accessed by viewers may not be “selected” by the media service provider, and these services should not fall within the scope of the Directive.
- Article 1(c) states that “editorial responsibility” means the exercise of effective control both over the selection of the programmes and over their organisation in a chronological catalogue, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services.’ Therefore, several criteria must be fulfilled in order for relevant on-demand services to fall under scope here: the media service provider must have “effective control” over both the “selection” and the “organisation” in a catalogue. Some on-demand services will not fulfil all these criteria.
- Recital 17 defines an on-demand service as “television-like”, in part, if “the nature and means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive”. The audiences of many online, on-demand services are sophisticated media consumers who do not expect regulatory protection within the scope of the Directive. They are also users of a wide and growing range of on-demand audiovisual media services that

will never fall within the scope of the Directive, irrespective of how “television-like” they may be, e.g. by virtue of being established outside the EU.

It is also important to ensure that the definition of an on-demand audiovisual media service includes the requirement of Recital 25 of the Directive that “All of the characteristics of an audiovisual media service set out in its definition and explained in Recitals 16 to 23 [of the Directive] should be present at the same time.”

Joost is concerned that the definitions that may be used by DCMS do not support fully or accurately reflect the Directive, thereby widening the scope of regulation and intervention. For instance, paragraph 24 of the consultation document introduces the concept that an on-demand programme service is one “mediated” by a service provider exercising “editorial responsibility”. The expression “mediated” is not used in the Directive and its implication is not clear.

While the consultation document discusses some aspects of the proposed definitions, it is not comprehensive in its treatment of definitions, and it is therefore unclear where and how all the other relevant aspects will be addressed. For instance, paragraph 26 of the consultation document states that the “definition of ‘video-on-demand’ will encapsulate a number of key ideas”, including that “the programmes must include programmes of a kind similar to those available on scheduled television broadcasting services”. This only part-addresses the Directive’s provision on what is “television-like”. It does not, for instance, include other relevant aspects of the definition such as the fact that service must “compete for the same audience of television broadcasts, and the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive”. It is not clear why DCMS has not addresses these elements.

Joost also wishes to reiterate the comments regarding the proposed definitions made in its previous submission to Ofcom and DCMS – in particular paragraphs 38 to 81 of that submission, which paragraphs have been reproduced in [Appendix 1](#).

**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?**

It is important that the Government incorporates and reflects accurately all the relevant elements of the Directive so that it does not inadvertently or arbitrarily exclude services that would otherwise be within the Directive’s scope.

Paragraph 19 of the consultation document states that the Directive’s Recitals “give a number of examples of services which are excluded from its scope”, including “services allowing users to share user-generated content”. Joost notes that paragraph 22 of the consultation document states that the effect is to exclude “an enormous swathe of new media services including those which are based around user-generated content”. However, Recital 16 of the Directive does not specifically state that user-generated content is automatically excluded. The Recital states that:

*“the definition of an audiovisual media service should cover only audiovisual media services, whether television broadcasting or on-demand, which are mass media, that is, which are not intended for reception by, and which could have a clear impact on, a significant proportion of the general public. Its scope should be limited to services as defined by the Treaty and therefore should cover any form of economic activity, including that of public service purposes, but should not cover activities which are primarily non-economic and which are not in competition with television broadcasting, such as private websites and services consisting*

*of the provision or distribution of audiovisual content generated by private users for the purposes of sharing and exchange within communities of interest.”*

The exclusion of audiovisual on-demand services on the basis that some of their content is “user-generated” is not automatically justified by this provision. Many websites featuring so-called user-generated content (“**UGC**”) are clearly a form of economic activity and feature a significant amount of television-like content (whether short-form or otherwise). They often cannot be considered “private websites”. Many established media companies provide their content to these sites; they sell and generate substantial volumes of advertising and sponsorship, and may even share this revenue with users. They may be no less in competition with television broadcasters, and no less “mass media” than other websites featuring long-form, professionally produced video content.

Joost noted in its previous submission (e.g. see paragraphs 39 to 57 of [Appendix 1](#)) concerns that DCMS and Ofcom may hold a preliminary view that Joost is a type of service likely to be considered within the scope of the new regulatory framework, while a great many (if not the vast majority of) other services are not, even if they feature a substantial amount of video content. Joost remains concerned that DCMS may be pursuing an approach that creates arbitrary distinctions, in which it may seek to apply new audiovisual regulation on services such as Joost, while excluding other services on, for example, the basis of their origins in video sharing or social networking. This would create inappropriate distortions in competition, and discriminate against services like Joost.

At the 26 September 2006 AVMS Stakeholder Meeting, for instance, it was suggested that services such as Bebo and YouTube would be likely to be out of scope of the Directive as their principal purpose was not to provide the public with programmes, and/or by virtue of their featuring user generated content. It is, however, increasingly difficult to justify distinctions between Joost and such services despite the origins of the latter in video sharing or social networking. Services such as YouTube, Bebo and MySpace, for instance, are used extensively by and for the distribution of short-form television-like content for economic purposes.

YouTube, for example, features a range of broadcasters’ own branded content, including dedicated BBC “channels” such as BBC EastEnders and BBC Top Gear channels, Channel 4’s E4 channel on YouTube and many others. These explicitly feature and market television content. For example:

*“Fancy watching a bit of EastEnders online? Short of standing in Albert Square or having a pint in the Queen Vic, this YouTube channel is the best place to be to watch your favourite bits from Britain’s favourite soap, whenever you want.”*

<http://uk.youtube.com/eastenders>

*“The Best of British TV. Top Gear, Mighty Boosh, Doctor Who, Attenborough, Parkinson, Catherine Tate & the rest from BBC Worldwide!”*

<http://uk.youtube.com/user/BBCWorldwide>

The fact that the television content on these services may be short form, or shared by and commented on among users, does not justify or automatically give grounds for exclusion from scope.

Clips and other short-form content (e.g. music videos) are established forms of programming. The BBC acknowledges this in a viewer response on one of its YouTube channels:<sup>1</sup>

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<sup>1</sup> [http://uk.youtube.com/groups\\_forum?name=BBCWorldwideFAQs&topic=6\\_1TgD-ndKQ&ytsession=dhBUYx87SshUI7C8Qar-JjmCkQVqU86y84An890uFSCHEsq0qZU2c8srOfRI5QD9kCC0zHQ1m8oO2gvriABVPal3RAK3CyzYLc0bsBA9VGY9dLSCFFjXbWr9n1ZBhGZ5j6-Q4JVicN-B5b9tFvyxEg2WQqMpTn-Zl1NMWbeqO0mqTG7t0P6u-8Fq4CTBFsA5dkdLuB4dwaEGFLG-CZ1OA7Pwt95QLQgxRPN4sSU7h0AZxrJ31udYOumx0sTB-OgwVEvuR\\_vXUQEGJi1iSSb0vm2rWQZ](http://uk.youtube.com/groups_forum?name=BBCWorldwideFAQs&topic=6_1TgD-ndKQ&ytsession=dhBUYx87SshUI7C8Qar-JjmCkQVqU86y84An890uFSCHEsq0qZU2c8srOfRI5QD9kCC0zHQ1m8oO2gvriABVPal3RAK3CyzYLc0bsBA9VGY9dLSCFFjXbWr9n1ZBhGZ5j6-Q4JVicN-B5b9tFvyxEg2WQqMpTn-Zl1NMWbeqO0mqTG7t0P6u-8Fq4CTBFsA5dkdLuB4dwaEGFLG-CZ1OA7Pwt95QLQgxRPN4sSU7h0AZxrJ31udYOumx0sTB-OgwVEvuR_vXUQEGJi1iSSb0vm2rWQZ)

[BBCWorldwide](#) (14 December 2007)

**Q: Why do you only have clips, not full episodes?**

[BBCWorldwide](#) (10 months ago) Show Hide

Marked as spam

A: YouTube is a website showcasing short-form programmes, with an official limit of 10 minutes per video. We've concentrated on finding the best bits of the programming in our catalogue so you can get straight to the memorable moments, hilarious skits or breath-taking visuals featured throughout all our shows.

Broadcasters' and other media content owners' provision of television content is not unique to YouTube. For example, there are various BBC "channel" on Bebo<sup>2</sup>.

There has been increasing convergence amongst online, on-demand services recently, particularly during recent months. Joost is now a web-based service with a strong social networking element, further eroding the distinctions between Joost and services such as Bebo and MySpace. In addition, services that have their origins in UGC, are looking to move away from short form clips and UGC. YouTube, for example, has announced plans to distribute long form programming, including full length television programmes and feature films<sup>3</sup>. By way of illustration, [Appendix 2](#) shows various screen shots of Joost, Bebo, MySpace and YouTube – in Joost's opinion it would certainly not be apparent to the average user why any one of these services would be subject to regulation, while the others would remain out of scope.

Joost is not arguing that all the above services automatically fall within the scope of the Directive if, for instance, they carry UGC and are economic in nature, or carry UGC as well as professionally produced content. DCMS has confirmed the Recital 25 requirement that a service must meet all of the relevant criteria to fall under scope. These services (as well as Joost's) may not fall within scope as they may not match the other criteria required, e.g. with regard to their potential impact on the public, consumer expectations regarding regulation, or the fact that the media service provider does not exercise effective control over the selection and organisation of programming in a catalogue. However, Joost is concerned that arbitrary distinctions are not created.

**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?**

See our response to Questions 2 and 3 above.

**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?**

In Article 1(c), the Directive explicitly uses the term "effective control" rather than "general control" in relation to the definition of "editorial responsibility". Joost notes the consultation document explanation (beginning in paragraph 30) that the UK has used the concept of "general control" to

<sup>2</sup> <http://www.bebo.com/Profile.jsp?MemberId=5434408711>

<sup>3</sup> [http://www.mediaweek.com/mw/content\\_display/news/digital-downloads/broadband/e3ib51a5e93dda16ab73177b512ec7090fa](http://www.mediaweek.com/mw/content_display/news/digital-downloads/broadband/e3ib51a5e93dda16ab73177b512ec7090fa)  
<http://www.telegraph.co.uk/news/3403264/YouTube-in-talks-to-show-full-length-films.html>  
<http://www.guardian.co.uk/technology/2008/nov/08/youtube-film-technology-business>  
[http://www.nytimes.com/2008/11/10/business/media/10mgm.html?\\_r=2&oref=slogin&oref=slogin](http://www.nytimes.com/2008/11/10/business/media/10mgm.html?_r=2&oref=slogin&oref=slogin)

identify the person who must hold the licence for a scheduled television broadcasting service, and that the aim of this is “to capture the right level of responsibility within the hierarchy of the broadcasting industry”, and DCMS’ view that it “has worked in practice”.

However, it is not clear that “general control” is appropriate for determining the person or organisation that is subject to regulation in respect of a particular video-on-demand service. There may be no single person or organisation which exercises effective control over both the selection of the programmes and over their organisation in a catalogue in the case of on-demand audiovisual media services. This does not justify the arbitrary choice of someone (or multiple persons) to regulate, simply in order to have a regulatory target. The correct course may be forbearance rather than the artificial inclusion of a service under scope.

The fact that there may be UK on-demand services outside of the Directive’s scope does not mean that the service providers could not follow regulatory codes on a voluntary basis, if appropriate, and/or other consumer protection measures. To the contrary, there is likely to be an incentive for unregulated services to participate in self-regulatory initiatives. The Government has supported such an approach in the online world with the establishment of the new UK Council on Child Internet Safety, following on from other initiatives such as the Home Office Task Force on Child Protection on the Internet. Here, UK online service providers have come together to develop and support self-regulatory codes and best practices. The Government’s approach here is explicitly not to intervene via regulation in the first instance.

If the UK were to pursue regulatory intervention to a level beyond that which is absolutely necessary, it is likely that service providers, particularly those using the internet as their principal means of distribution, will simply establish themselves outside of the jurisdiction, with a consequent loss of economic activity in the UK. Moreover, given that such businesses will be free to operate identically from outside of the EU – and one only has to consider the popularity in the UK of US-based video sites such as YouTube to see this happening in practice – the objective of the AVMS Directive to protect UK consumers will not be met.

Reiterating a point made in its previous submission, Joost would caution against the assumption that a definition or approach that has worked in the linear TV world is “right” or would “work in practice” in the online, on-demand world. In the world of traditional broadcasting services, a linear broadcaster, even one who subcontracts aspects of its service – for example, contracting out the overnight hours of its service to a separately owned and operated teleshopping service – has a degree of effective control that does not exist in the online world, where any portal, platform or website is capable of having hundreds and thousands of different content providers selecting, uploading and sharing content.

Joost notes the Government’s view, in paragraph 31 of the consultation document, that “The operator of a broadcasting platform, such as a digital terrestrial multiplex, direct-to-home satellite television system or a cable television network, does not have regulatory responsibility because they do not have general control [emphasis added].” In fact, these platform operators in many instances have far more control than many online, on-demand service providers. No television channel can be distributed on a cable television network without the technical and contractual consent of the cable operator (potentially a form of “mediation” or “editorial responsibility”). It is impossible for a content provider to gain carriage on Virgin Media cable networks, for instance, without a carriage or other agreement with that media service provider. Virgin Media, like all cable operators, also has the technical ability to block and/or remove channels with relative ease. Channel distribution via a direct-to-home satellite platform requires that access is granted by the satellite operator and uplink service provider; furthermore, encryption services and electronic programme guide listings

controlled by one or more identifiable operators may also serve as access points or gateways where “editorial responsibility” could be imposed.

In principle, compliance responsibility for all of the channels on a cable television system could be placed on the cable operator (or in the case, of digital satellite, the satellite operator or uplinking entity), who would then have to have contractual or other means to secure compliance with applicable codes and other requirements from each and every channel provider.

The Government, however, does not do this as it does not consider that the cable operator has effective control and editorial responsibility over the service, even though it is in effect an “aggregator”. It would be similarly wrong in the online world to assume automatically that on-demand service providers or aggregators will necessarily be the appropriate entity to regulate.

That said, seeking to impose the regulatory burden on the provider of content will also likely have a detrimental effect on the success of EU based audiovisual media services – given a choice between two platforms with global reach, one that requires the content provider to assume the burden of regulation, and one where no such burden arises, the content provider will inevitably provide their content to the “unregulated” service, which will put the operators of regulated services at a competitive disadvantage when it comes to the acquisition of content.

Bearing this in mind, as discussed above, rather than seeking to impose regulation on an arbitrary basis, or on the basis of convenience, the correct course may be forbearance and the use of voluntary codes.

**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?***

The answers to the previous questions indicate that the only instances where regulatory responsibilities should be placed on any on-demand service provider is where that service provider has effective control over both the selection and organisation of the programmes in a catalogue, and where the other criteria governing scope are also fulfilled.

In the unlikely situation that the Government has two entities (a content provider and an aggregator) that both satisfy all criteria governing scope, then the Government might consider a system whereby an aggregator can elect to assume regulatory responsibility for the service as a whole. If an aggregator chooses not make this election, compliance will remain the responsibility of each individual content provider whose content is available on the aggregated service. Such a scheme would likely create an incentive for service providers to assume this responsibility, without obliging all service providers to do so.

**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?***

Joost acknowledges the UK Government’s obligation to ensure regulatory compliance across all services under its jurisdiction which fall within the scope of the Directive. We also understand and

fully support the consumer protection aims behind the Directive. Joost operates to a high level of good practice and self-regulation in respect of its own service and believes it is in the interest of all on-demand services to do likewise, irrespective of the existence of the Directive.

The answers to previous questions suggest it may be the case that neither the EU or non-EU service falls under the scope of the Directive, and it would be inappropriate and arbitrary to fix regulatory responsibility on either the perceived “aggregator” or individual content originator. Nonetheless, if an EU service provider had imposed on it regulatory responsibility for services that are outside of its editorial control, the sanctions for failure to comply must be proportionate – see our responses to Question16 below and paragraphs 19 to 22 of Appendix 1.

In any event, Joost believes that it would be sufficient to draw a user’s attention to the fact that such on-demand service originates from outside of the EU and therefore is not subject to the same requirements as an EU-based service. Recital 17 of the Directive makes it clear that it is a characteristic of an audiovisual media service that “the nature and means of access to the services would lead the consumer reasonably to expect regulatory protection within the scope of the [the] Directive”. Consumers of online audiovisual services generally have little or no expectation of traditional (or other) television regulation of these services. Moreover, irrespective of the implementation of the Directive on EU services within its scope, these consumers will also be users of (and always one click away from) a vast range of non-EU based online services that will not be subject to any of the Directive’s provisions – even when they feature identical or near-identical audiovisual content – and any user expectations of such regulation will inevitably be reduced.

**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?***

Video-on-demand services can potentially offer access to as wide a range of audiovisual content and services as exists throughout the online world.

Regarding the issue of control, the answers to the previous questions suggest that there may be a distinction between “effective control” and “general control”. The Directive explicitly uses the former and not the latter term. If it is not clear that a service provider has effective control, and also taking into account the other criteria governing scope and the Government’s commitment to Better Regulation Principles, it may not be appropriate to choose a point of regulation, and in those circumstances, Government should forebear from doing so. Self-regulation provides an alternative consumer protection means in any event.

**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?***

For regulatory purposes, there is a difference between scheduled and on-demand services. With on-demand services, a user makes a conscious decision to select and then view a particular item of content, usually based on a description or synopsis of that content, and therefore takes a degree of responsibility for his/her decision to view that content.

With regard to scheduled services, some users may also make a conscious decision to view such material; however, others may be exposed to the content of the scheduled service inadvertently and without request (while maintaining the option of exiting that content at any point in favour of other media choices). There is, therefore, an argument for the service provider to accept a greater degree of responsibility with regard to scheduled services, and it is appropriate to treat scheduled and on-demand parts of the same service differently in some respects (to the extent that regulation applies to either).

Where regulation does apply, the compliance responsibility should lie with the entity that has editorial control. For instance, if an on-demand service merely redistributes a linear scheduled service (e.g. an online simulcast of a television broadcast), then the original broadcaster must retain responsibility for editorial compliance. If an on-demand service distributes coverage of a live event, such as a concert or sports event, then the compliance responsibility should lie with the producer of the coverage (which may be the provider of the on-demand service, but may equally be a third party).

#### **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?**

Joost believes that all of the criteria identified are appropriate to take into account; however, these are not exhaustive. Accountability is a key criterion that is not on the list, and relates not only to the accountability of any new co-regulator(s) to Government for implementation of the relevant provision of the Directive, but also accountability to all relevant stakeholders.

The need to avoid “regulatory capture” is another important criterion which should be added, and in this regard, Joost would reiterate its comments in its previous submission - see paragraphs 14 to 18 of [Appendix 1](#).

**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.**

Joost would strongly support voluntary codes or other forms of self-regulation. However, with respect to co-regulatory or statutory models, the models identified appear to offer adequate opportunity for discussion without considering additional models.

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

Joost has previously advised DCMS and Ofcom to take into account the low barriers to entry in the online video sector, and the possible effect this will have on the number of potentially regulated services (see paragraph 78 of [Appendix 1](#)).

As a consequence, the Government must understand that there are likely to be a great number of players in this sector, over time. While the consultation document states that “As a matter of policy, the Government aims to draw into the scope of UK regulation a narrow range of services falling within the scope of the AVMS Directive, rather than extending regulation to a wide range of audiovisual services” (page 9, paragraph 7), a wide range of services could be deemed to be within

scope if the Government (or regulator/co-regulator) does not take a light touch or minimalist application to the implementation of the Directive (including in the interpretation of matters such as editorial responsibility and effective control, consumer expectations etc), or introduce some kind of de minimis threshold (see paragraphs 75 to 77 of [Appendix 1](#)).

An individual operating a website from home offering to the public nothing more than a handful of videos (which needn't be long-form to be TV-like) on an on-demand basis, and generating advertising revenue alongside (but not necessarily directly from) that content, is capable of being considered an on-demand service as much as a service like Joost, if overly-restrictive definitions and interpretation of the Directive are adopted in the UK.

Given the number of services that could potentially fall within scope in this way, it is essential that the regulatory regime be as open and light touch as possible. Compulsory membership will likely set a barrier to entry for new entrants – the high membership fees applicable to ATVOD membership are instructive here. Prior approval will also operate as a barrier to entry, and will create an unnecessary administrative burden on applicants and the regulatory body. Prior notification may be an appropriate mechanism. However, this puts the burden of interpreting and complying the complex concepts set out in the AVMS Directive on the service provider, and given the number of services potentially within scope, it seems likely that a number of service providers may fail to comply with this requirement, either through lack of awareness or in the belief that their home-operated website is not the kind of mass media contemplated by the AVMS Directive. General conditions would not require any affirmative action on the part of the service provider, and might therefore provide the most practical solution, as long as the conditions are not so prescriptive as to stifle innovation.

- 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?***

Joost believes that Ofcom or an appointed industry co-regulator should be responsible for developing the standards code, in close consultation with industry. Joost believes it is important for industry as a whole to be involved in developing the code, rather than the industry co-regulator alone, for the reasons set out in paragraphs 14 to 18 of [Appendix 1](#).

Interpretation, enforcement, investigation of complaints etc should be the responsibility of an industry co-regulator, with Ofcom having statutory back stop powers.

- 16. *What sort of sanctions should apply and who should apply them?***

Joost believes that sanctions should be applied by the co-regulator, with Ofcom having statutory back stop powers. However, Joost believes that the sanctions should be limited, as discussed in paragraphs 19 to 22 of [Appendix 1](#).

**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?**

Backstop powers should be reserved to Ofcom, and only at this level should financial or injunctive penalties be applied.

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

Joost believes that the second model discussed in the consultation document is probably the most appropriate, with Ofcom assigning powers to the co-regulator. This would allow backstop powers to be retained by Ofcom whilst giving industry a greater role in the ownership and operation of the co-regulatory regime.

#### **ADVERTISING IN ON-DEMAND AUDIOVISUAL MEDIA SERVICES**

**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?**

The consultation document notes (paragraph 8, page 9) that the Directive requires Member States to ensure that the advertising standards which it sets are met by advertisements which “accompany or are included in a programme”. It goes on to say that there are two possible interpretations of which advertisements in an on-demand service should be regulated under the Directive, and that one would give a wider meaning to “accompany” than the other.

Adherence to the Principles of Better Regulation suggests that the Government should adopt the narrower interpretation, as it is targeted only where action is absolutely needed.

**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?**

Joost does not believe that establishing a new co-regulator for on-demand services is necessary or justified. The ASA currently regulates advertising under powers delegated by Ofcom, and Joost believes that this system works adequately. The ASA has the necessary expertise to regulate advertising on on-demand services – both video and display advertising – and would provide transparency and consistency of approach, both for industry and for consumers.

- 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?*

Any commercial involvement in editorial content (e.g. through sponsorship or product placement) should be regulated by the body responsible for regulating programme content. However, Joost believes that the regulation of advertising content (i.e. other than sponsorship or product placement) is best handled by the ASA as noted above. This will provide consistency with existing practice in broadcasting, avoid duplication and provide transparency for consumers.

#### ***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?***

Joost's answer to question 1 is also relevant to question 26. Joost has not conducted a legal analysis enabling it to comment on whether it is necessary for the Government to, as DCMS has suggested, first legislate to prohibit product placement by law, before it is able to take advantage of any derogations permitted under the Directive. If it is not absolutely necessary to introduce or amend legislation to comply with the requirements of the Directive in respect of product placement, there is no reason to prohibit it by law rather than via relevant codes or other means.

Joost believes that the Government should take full advantage of the opportunity to allow product placement in all the programme genres specified by the Directive. Derogations from any overall prohibition of product placement should be permitted to the fullest extent possible. Product placement is a valuable potential source of revenue for content producers, which is essential for investment in new content particularly at a time when advertising revenues are in decline. Prohibiting product placement will be of limited benefit to consumers given the amount of imported content, particularly television programmes and feature films from the United States, which routinely feature product placement.

There are presently no restrictions on product placement in UK video-on-demand services, nor is there any evidence of any consumer harm from product placement in these services. It would be a particularly retrograde and unmerited step – and wholly against the Government’s commitments to Better Regulation – to introduce restrictions on these services in the absence of demonstrable consumer harm, and in light of the potential damage this could do to the growth and economic viability of UK on-demand services – and to UK competitiveness, given the fact that UK consumers will have the ability to access a plethora of non-EU services which are not subject to such restrictions.

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

If a significant number of viewers complain about the level of product placement in a particular programme, or if there is other demonstrable consumer harm, then the regulator might have justification for requiring the regulated entity to provide the regulator/co-regulator with a copy of its agreement(s) with the commercial party to enable the regulator or co-regulator to determine whether any aspect of the commercial arrangement required the regulated entity to compromise its editorial integrity.

However, any such power should be used sparingly. Ultimately, audiences will determine the acceptable level of product placement – if the level of prominence is too great, whether or not editorial integrity is compromised, this will have detrimental effect on the quality of the output, and the audiences for that content will inevitably diminish. This will naturally discourage producers and service providers from accepting too great a level of product placement.

Joost understands that there may be concerns about the introduction of product placement on traditional broadcast television, where restrictions have been in place for many years. We also understand that some UK broadcasters have always accepted restrictions over and above that of other audiovisual media in return for unique Government-granted privileges, such as free or discounted access to scarce terrestrial spectrum. However, it is unequivocally the case that online, on-demand services such as Joost do not receive any such benefits from Government; nor do any restrictions currently apply to these services. The success of these services, which do not benefit from the mass audiences of traditional linear broadcasting, depends entirely on users choosing to visit their sites, select and view individual items of content delivered on-demand, and to return to these sites in the future. If consumers were to have concerns over editorial integrity, or if product placement were to be unduly intrusive, this would have an adverse effect on these businesses.

**30. *How could “undue prominence” be avoided, given the commercial imperatives for audiences to recognise the products placed?***

Undue prominence is closely linked to editorial integrity and audiences’ tolerance of commercial references in programmes. As set out in our response to question 29, Joost believes that audiences will determine the point at which product placement undermines the integrity of the programme. However, given the Directive’s need for undue prominence to be recognised, then the threshold at which “prominence” becomes “undue” will need to be adjusted to reflect the commercial imperatives. For example, in a world where product placement is prohibited, a brand or product may be considered to have undue prominence if it is clearly visible, or referred to, at all on screen without editorial justification. If product placement is to be permitted, then some display or reference to the product or brand must be permitted – the point at which this prominence becomes “undue” might be considered with respect to the time that such product or brand is clearly visible on screen other than in an incidental manner (i.e. restrictions on deliberate, extended close ups of a product), or the

number of verbal references to a product or brand within a programme (e.g. no more than [x] such references per [y] minutes).

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

This is addressed, in part, in the answer to question 29.

The fact that on-demand viewers make a conscious and informed decision to view a particular programme, means that the viewer should accept a greater degree of responsibility when it comes to the content of that programme – this would include the editorial content and any product placement. It would also be relatively easy for on-demand service providers to include reference to a commercial partner in the programme synopsis. Therefore, Joost believes that there is a justification for maintaining commercial freedoms for product placement with on-demand services even if the Government wishes to maintain restrictions on linear TV.

Furthermore, VOD, particularly online VOD, is a nascent market. To limit opportunities for product placement and similar commercial opportunities (e.g. sponsorship) risks constraining the development of this market, without achieving any of the public policy objectives of the Directive. UK users will continue to have access to non-EU services without any such restrictions on product placement. Furthermore, given the scope for Member States to derogate from the general prohibition on product placement, and the fact that other Member States (e.g. Austria) have taken a more relaxed approach to product placement even under the existing Television Without Frontiers Directive, the UK risks introducing restrictions that may not even apply in neighbouring Member States, if other governments allow greater use of the derogations.

**32. *Should prop placement continue to be permitted?***

There are presently no restrictions on prop placement in UK video-on-demand services, nor is there any evidence of any consumer harm from prop placement in these services. As with product placement, it would be against the Government's commitments to Better Regulation to introduce any restrictions (unless they are absolutely necessary for compliance with the Directive) on these services, in the absence of demonstrable consumer harm, and in light of the adverse effects this could have on the growth and economic viability of UK on-demand services and UK competitiveness as a whole, given the fact that UK consumers will have the ability to access a myriad of non-EU services which are not subject to such restriction).

**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)?***

The value at which prop placement becomes product placement must take into account not just the value of the product, but also how it is used in the programme. If a car manufacturer was to provide

a car to be driven by the central character in a drama series, this might be considered product placement. However, if the car was provided for use in the background of a scene shot at a car showroom, then this should be considered prop placement despite the fact that the car is of “significant value”.

The value should be set by the body responsible for regulating programme content. In the case of VOD, an industry co-regulator will be better placed, in setting these limits, to take account of the commercial realities to which producers and service providers are exposed, in setting these limits.

Joost believes that the principal distinction between prop placement and product placement should be whether or not the provider of the product offers any financial or other incentive for the inclusion of their product in the production. If there is a financial incentive other than the use of the product, then it may be considered product placement; if not, then it should be considered prop placement.

**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?***

See response to question 28 above.

It is also worth noting that Article 3(g)(2) of the Directive states that, by way of derogation, “product placement shall be admissible unless a Member State decides otherwise – in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes”. Under the Directive, therefore, the Government has the opportunity to permit product placement not just in programmes acquired from outside the UK but those in those genres for programmes acquired (or commissioned) in the UK as well.

On-demand services are not presently subject to any restrictions on these genres, whether they originate from the UK or outside the UK, and there is no compelling case for the introduction of such restrictions for the reasons noted in previous answers.

**37. *How should product placement be signalled to viewers?***

Article 3(g) of the Directive states that, by way of exception, “Member States may choose to waive the requirements set out in point (d) [i.e. product placement signalling] provided that the programme in question has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.”

As noted previously, there are currently no restrictions on product placement on on-demand services. In the absence of demonstrable consumer harm and in light of its commitment to Better Regulation Principles, new signalling requirements should not be compulsory. However, on-demand service providers may choose to signal product placement themselves.

In this case, service providers should have complete discretion over how they signal product placement to viewers. Some service providers may wish to offer this as a further opportunity to offer brand exposure to their commercial partner, in the same way as signalling of programme sponsorship has become a commercial opportunity. Other service providers may prefer to keep the existence of the product placement more discreet, in which case, they should be permitted to signal product placement using less intrusive on screen captioning, e.g. in opening and closing credits.

**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)?**

Product placement is part of the content of programmes, and therefore should be set by the body responsible for regulating the content of programmes.

**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?**

Joost does not propose to comment on these aspects of the Directive.

**IMPACT AND COMPETITION ASSESSMENT RELATED QUESTIONS**

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

Joost operates an online VOD service, and is therefore limiting its comments to developments in that sector.

In Joost's view, the key technical developments that are likely to affect online VOD are related to the fact that the technology required to operate a VOD platform is becoming increasingly standardised and commoditised (see, for example, Adobe's Flash software), which reduces the need for new entrants to develop their own proprietary technology and thus reduces the cost of creating a new platform. Bandwidth costs are also decreasing, making it cheaper to operate the platform.

Key market developments in the UK are likely to include:

- (i) the effect of the advertising downturn on Joost and other online VOD business that rely exclusively on advertising revenue (as opposed to operating a subscription-based or pay-per-view model). It is not clear to what extent online advertising, particularly online video advertising, will be affected by the current economic downturn, but it is likely that businesses that are able to leverage other distribution channels or have other business interests will be in a better position to survive than those that are trying to build a business relying solely on advertising revenues;

- (ii) further consolidation in the broadband ISP market, and the roll-out (or otherwise) of next generation access – without reliable high-speed broadband access, online VOD services will be unable to grow and develop; and
- (iii) the entry into the market of new services operated by established broadcasters, for example Project Kangaroo (the proposed joint venture between BBC Worldwide, ITV and Channel Four), and the expected international roll out of Hulu (the joint venture between News Corporation and NBC Universal). These businesses have preferential access to premium content and have the opportunity to cross promote their services on affiliated television channels, which will give them a significant competitive advantage over independent content aggregation services, such as Joost.

With the additional burden of regulation, online VOD services are less able to compete. The likely affect of this, given the global nature of the internet, is that businesses will establish themselves outside of the EU and provide their services from there.

**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?***

There is no reason why the overwhelming majority of online audiovisual businesses, including VOD operators such as Joost, could not operate equally effectively from outside of the UK or the EU. Joost has chosen to base itself here, but its UK business could be operated equally effectively from its New York office with little, if any, incremental cost.

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

Joost believes that the proposals are unlikely to impact on the number and range of online VOD services available to UK consumers. However, the proposals may impact on the number of service providers who choose to establish themselves in the UK. Any undue regulatory burden will make the UK a less attractive place to do business and will likely reinforce the advantage of non-EU locations (particularly the US) in this regard.

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

To the extent that service providers establish themselves outside of the jurisdiction, competition need not be affected. Regarding businesses that remain established in the UK, these are likely to be at a competitive disadvantage compared to those that are not subject to regulation. Moreover, even between businesses established in the UK, there will be those that are better suited to comply with the increased regulatory burden (e.g. services operated by existing broadcasters or other businesses with existing compliance functions), and those that are not. Given the other competitive advantages likely to enjoyed by these services (access to content, cross-promotional opportunities, a greater ability to deal with an advertising recession), it is possible that the market could see a reduction in competition with the loss of smaller, independent services.

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

Innovation inevitably thrives best in an environment of minimal (or no) regulation. Joost believes that companies and individuals will continue to innovate in the light of these proposals, but when it comes to turning innovation into a viable business, it is likely that these companies or individuals would elect to establish operations in jurisdictions that allow them the greatest commercial/economic flexibility. In the online world, this is particularly true as a business does not need to be established in the UK in order to serve the UK market. There is therefore a risk either that innovation will be stifled, or more likely that UK-based businesses will grow to a point where they are viable and then chose to relocate to a different jurisdiction where they have greater freedom to operate. The experience of the online gambling industry is instructive here, as well as the recent relocation (or announced relocation) of some major UK companies' corporate headquarters to jurisdictions with more favourable tax regimes.

## Appendix 1

### Selected Extracts from Joost's submission to DCMS and Ofcom regarding Draft AVMS Regulations

" [paragraphs 1 to 13 deliberately omitted]

#### **Risk of regulatory capture**

14. *Concerns also apply within any environment where there is a risk of "regulatory capture" by particular industry segments. DCMS and Ofcom have indicated that the Directive does not allow complete self-regulation for those within its scope, and that where there must be oversight co-regulation is preferred. However, it is important to ensure that any appointed co-regulator(s), and the codes of conduct adopted, accurately reflect the full range of platforms and services that may be governed by those co-regulator(s) and code(s).*
15. *At present, ATVOD appears to have positioned itself as a possible co-regulator. However, membership of ATVOD is dominated by established companies who may determine that various incremental compliance burdens are manageable for them, but create barriers for other new or potential entrants to the market.*
16. *The ATVOD codes are very heavily oriented towards those operators that distribute programming acquired from traditional broadcasters, or from other ATVOD members. In these situations, the burden for ATVOD members is low. However, where programming is acquired from smaller independent producers, particularly those outside of the EU, which is the case for most online platform operators, the ATVOD codes provide little assistance and the compliance burden remains high.*
17. *Unlike ATVOD members, the majority of whom have dedicated regulatory and public affairs functions, most online start-ups do not have the necessary financial or human resources to lobby effectively on these issues. This is evident from the businesses represented at the recent VOD Working Group sessions, and the membership of ATVOD itself (where the membership fee alone is a barrier to active participation for many).*
18. ***It is important that any regulator or co-regulator takes due account of the concerns of all entrants to avoid distorting the market.***

#### **Requirements and Sanctions**

19. *Any discussion of regulation can only be productive if the compliance burden and the sanctions are known. At this stage, neither is clear.*
20. *In the case of on-demand viewing over the Internet, it is imperative that the regulators recognize the fundamental difference between the expectations of the online consumers and those viewing traditional linear television. Consumers of video online do not expect the same degree of protection as traditional television audiences (discussed further in paragraphs 29 to 35 below), and this should be reflected in the sanctions. Similarly, the potential damage caused by broadcasting an item of offending content is significantly greater when delivered simultaneously to thousands of homes, than when viewed individually by sophisticated consumers that have specifically chosen to watch that content.*

21. *In terms of the overall burden of regulatory compliance, due regard must be had to the practical impact on business. Any moderately successful online platform will have thousands of hours of content available at any one time, and it is impractical to expect online platforms to clear each item of content prior to publication.*
22. ***Consequently, Joost believes that the maximum sanction that should ordinarily be imposed on any on-demand service provider in the online environment should be an obligation to take down the offending item of content. Financial or injunctive penalties are not appropriate, except in the most exceptional circumstances (for example, gross negligence, or repeated serious breaches of the regulations/codes).***

[paragraphs 23 to 35 deliberately omitted]

#### **SPECIFIC COMMENTS ON DRAFT REGULATIONS**

36. *The following represent Joost's comments on the specific wording of the Draft Regulations, and should be considered in the context of Joost's general comments outlined in paragraphs 1 to 35 above.*
37. *Subsection (1) of the new Section 240A attempts to define an "on-demand programme service" by reference to:*
  - *whether a service is a VOD "facility" falling under subsection (2), including – via subsection (3) – whether the programmes involved are comparable to the form and content of a kind normally included in television programme services (in effect, "TV-like");*
  - *editorial responsibility, defined in subsection (4); and*
  - *use by members of the public, defined in subsection (5).*
38. *Joost's comments on these provisions are considered below.*

#### **Definition of a VOD "facility" and what is "TV-like" – Subsections (2) and (3)**

39. *According to Subsection (2), a service will be within scope if its principal purpose is to allow users to make individual selections of TV-like programmes (those falling under subsection (3)), received over an electronic communications network, for viewing at a time of the user's choosing.*
40. *The latter two elements are not contentious from Joost's point of view, but the reference to the nature of the programmes is problematic.*
41. *Subsection (3) defines the relevant programmes as "those (and only those) whose form and content are comparable to the form and content of programmes of a kind normally included in television programme services".*
42. *Joost believes that defining a service by reference to its programmes, and defining programmes by reference to television, is an approach that will cause increasing confusion over time (there is also an element of circularity in the definitions).*
43. *As noted in paragraph 34 above, during the VOD Working Group discussions DCMS and Ofcom indicated that Joost is a service likely to be considered as within scope, while a great many (in fact, the vast majority of) others featuring a substantial amount of video content are not. This*

*appears to be based on the preliminary thinking of DCMS and Ofcom regarding the areas of consumer expectation (discussed in paragraphs 29 to 35 above), editorial control (discussed in paragraphs 58 to 73 below), and use by (and impact on) members of the public (discussed in paragraphs 74 to 79 below) – along with an assumption that the audiovisual material on Joost is of a form and content of a kind normally included in television programme services, while other sites with substantial video content are not. Joost believes that there are misconceptions underpinning DCMS' and Ofcom's initial views, and alternative, lighter touch ways of approaching implementation (and interpretation) of the Directive in any event.*

44. ***It is important that DCMS and Ofcom do not pursue an approach that creates arbitrary distinctions, and leads to distortions in competition and discrimination against services like Joost.***
45. *With regard to the question of what comprises TV-like content, Joost's impression from the VOD Working Group discussions is that DCMS and Ofcom do not consider a vast range of services featuring video content, such as YouTube, Bebo and MySpace (aside from issues of establishment) as being less "TV-like" by virtue of their featuring one or more of the following:*
  - *short-form content or clips, rather than "full length" programmes;*
  - *user generated content ("UGC");*
  - *video content considered not "professionally produced"; and/or*
  - *social networking as well as video content.*
46. *This view also may be derived from perceptions about the nature and likely direction of different types of online services during the period in which the Directive was being formulated, and which also may have fed into the adoption of some recitals such as:*
  - *Recital 16, exempting activities which are primarily non-economic and "not in competition with television broadcasting, such as private websites and services consisting of the provision or distribution of audiovisual content generate by private users for the purposes of sharing and exchange within communities of interest";*
  - *Recital 18, exempting services whose "principal purpose is not the provision of programmes", i.e. where any audiovisual content is merely "incidental" to the service and not its principal purpose;*
  - *Recital 21 exempting "electronic versions of newspapers and magazines".*
47. *Some of the assumptions made about individual services, or types of services, during the period in which the Directive was being formulated are already out of date. By the time that any Regulations are brought into force, this will be even more so.*
48. *Consider the question of what comprises TV-like content, which relates to one of the DCMS/Ofcom criteria determining scope ("Does the service contain programmes with the form and content characteristics of TV broadcasting?") and Article 1(b) of the Directive. Article 1(b) defines "programme" by reference to form and content "comparable to the form and content of television broadcasting". It goes on to give examples including feature-length films, sports events, situation comedies, documentaries, children's programmes and original drama.*

49. It is important to note that the examples given in Article 1(b) are just that – examples - and not a comprehensive listing of items that can be considered comparable to the form and content of television broadcasting. Many other types of content are also comparable to the form and content of television broadcasting, including content on the growing number of online services that DCMS and Ofcom would be minded to exclude whilst discriminating in favour of the inclusion of services like Joost.
50. “TV-like” content on these online services includes:
- Promotional trailers and clips: Promotional trailers and clips are a standard, traditional and integral element of television broadcasting. Broadcasters such as BBC, ITV, Channel Four and hundreds of licensed digital television channels originate and feature promotional clips that are every bit as much of the form and content of television broadcasting as the other examples given in the Article 1(b) definition. Many online and on-demand services thrive on reuse of this broadcaster-created, television content, and traditional broadcasters are actively using the popularity of social networking and UGC sites to promote and exploit their television content (for example, see Channel Four’s MySpace profile for “Skins”<sup>4</sup>, and the BBC’s channels on YouTube<sup>5</sup>).
  - Music videos: Music videos comprise a significant proportion of material on many online services, including those featuring social networking and UGC. These are also of a form and content comparable to television broadcasting. Many are produced by or for broadcasters, and/or originated on broadcast TV, and many television broadcast channels are also comprised largely, or entirely, of music videos. It would be inconsistent and discriminatory to exclude from scope online services featuring such material on the basis that their content is not TV-like, whilst considering Joost as being within scope.
  - Other short form content: Channel Four operates an online service, FourDocs<sup>6</sup>, featuring documentaries of just three to five minutes in length. Some of these are also broadcast on Channel Four, e.g. in its “3 Minute Wonder” programme slot, and must therefore be considered “TV-like”.
  - User Generated Content: User generated content precedes the internet, forming part of broadcast television long before the emergence of today’s online UGC services. Broadcasters have invited users to generate and contribute their own content and featured this for many years now (e.g. “You’ve Been Framed”<sup>7</sup>)
  - Original programming: Traditional broadcasters are producing programmes specifically for online media (e.g. Five’s production of news programming for MySpace<sup>8</sup>).
51. Generally, we are seeing rapid convergence between television and online media, and professionally produced content and UGC. Current TV<sup>9</sup>, for example, is a UK licensed television channel and website produced and programmed in collaboration with its audience. FourDocs’ documentaries and music videos on online services provide further examples of this convergence, as does the fact that content and formats that were made popular on social networking sites are

<sup>4</sup> <http://www.myspace.com/e4skins2>

<sup>5</sup> <http://www.youtube.com/BBC>; <http://www.youtube.com/user/BBCWorldwide>; <http://www.youtube.com/user/bbcworldnews>

<sup>6</sup> <http://www.channel4.com/fourdocs/>

<sup>7</sup> <http://www.itv.com/Entertainment/comedy/YouveBeenFramed/default.html>

<sup>8</sup> [http://www.fivetvonline.tv/natashas\\_newsroom.php?id=111](http://www.fivetvonline.tv/natashas_newsroom.php?id=111)

<sup>9</sup> <http://current.com/>

transferring to traditional television<sup>10</sup>. Moreover, this trend seems set to continue. BlinkBox<sup>11</sup>, a UK based video start up which launched publicly last month, reportedly “aims to combine elements of social networking with e-commerce through a series of deals for film and TV content with major studios and producers”, and is also offering “a free ad-funded TV channel, providing shows such as Morph, Aardman’s Creature Comforts, Popeye, Betty Boop and Merry Melodies”<sup>12</sup>

52. *Since the AVMS Directive was envisaged, and even since its adoption, UGC and social networking sites have evolved significantly. As noted above, many UGC sites, including YouTube and DailyMotion, are now offering television and “television-like” content alongside UGC. They are also selling advertising, and have adopted the same revenue share model as Joost and other services with more “professionally-produced” content.*
53. *These services cannot be said to be “non-economic” or “not in competition with television broadcasting” in some or all respects, aspects that originally may have been considered grounds for exemption under Recital 16. Nor with their current and evolving characteristics can they be said to be services solely “consisting of the provision or distribution of audiovisual content generated by private users for the purposes of sharing and exchange within communities of interest”, or their video content “incidental”, when such content is becoming or has already become integral to their services.*
54. *Alternatively, if these services are to be considered out of scope, one must consider certain characteristics of Joost and similar services that should likewise justify their position out of scope.*
55. *For example, at the same time as UGC sites are featuring more professionally produced TV-like content, platforms such as Joost, Blip.tv, Babelgum and Vuze are opening up their platforms to a wider range of content owners, and allowing them to upload and manage their content themselves. Furthermore, services such as Joost offer the opportunity for users to interact and form communities and special interest groups, along the lines of those anticipated in Recital 16. Joost already offers social features such as the ability to chat with friends in Joost chatrooms and using popular instant messaging tools, to share content by emailing links to friends, and to post comments to their blogs. Joost is also actively working on enhanced social features to enable Joost users to create specific user groups, to more easily share and recommend the content they are watching, and to see what their friends are enjoying,. As such, services such as Joost consist of, and serve, communities and common interest groups in the same way as social networking sites, which Ofcom and DCMS believe to be out of scope.*

[Note: since this submission was originally made, Joost has relaunched as a web based service with enhanced social features, including a strong social networking component]

56. *In addition, from a policy perspective, Ofcom and DCMS should consider that the audience for many clips on the more successful UGC and social networking sites is significantly greater (at present) than the audience for programmes on Joost. Clips on YouTube regularly attract millions of views each week<sup>13</sup>. If the Directive is intended to protect consumers, then it would seem logical to ensure that this protection is applied at the point at which the potential damage is greatest, which would seem to be where the audience is the largest. To regulate one service, but to leave another service showing the same content to a larger audience unregulated, would seem to go against the main objective of the Directive in protecting consumers.*

<sup>10</sup> <http://www.c21media.net/resources/detail.asp?area=89&article=41208>

<sup>11</sup> <http://www.blinkbox.com/>

<sup>12</sup> <http://www.guardian.co.uk/media/2008/apr/23/digitalmedia.web20>

<sup>13</sup> <http://www.youtube.com/browse?s=mp&t=w&c=0&l=&b=0>

57. **Artificial distinctions between UGC and social networking sites on the one hand, and on the other hand, internet services with a greater proportion of TV-like material of the type listed as examples in the Directive, will restrict the development of the market for legitimate online video distribution in Europe.**

**Editorial Responsibility – Subsection (4) and Article 1(c)**

58. Article 1(c) of the Directive states that editorial responsibility “means the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual services” (underscoring added).
59. This establishes a twin test: the same person must have effective control over both the selection and the organisation of content within a schedule or catalogue. However, there is no definition of what comprises “selection” in the Directive. Furthermore, while it is understood what a schedule is in the case of traditional television broadcasts, there does not appear to be any definition of a “catalogue” in respect of on-demand services.
60. As with other aspects of the Directive that were originally based on perceptions about the then-state and likely direction of online services, it is questionable whether and to what extent a concept such as “catalogue” even applies to today’s rapidly evolving online environment. It may be that only a minority of on-demand services have a “catalogue” in the sense in which it was originally envisaged, before recent developments whereby any portal or umbrella service provider can now lead to scores, hundreds and thousands of different content providers, many of whom select and upload content themselves, often operating their own branded channels or services within a service.
61. Subsection (4) of the Draft Regulations defines editorial responsibility by reference to a person’s “general control” over:
- “which programmes are included in the range of programmes offered to the user in question, or which other services the service in question gives access to, and
  - “the manner in which those programmes, the video-on-demand facility and any other services or facilities provided as part of the service are organised within it;

adding that:

“a service may be regarded as being under a person’s editorial responsibility whether or not that person has control of the content of individual programmes or of the distribution of the service.”

62. Paragraph 13 of the explanatory note accompanying the Draft Regulations states that subsection (4) is intended “as a filter, removing from the scope of the AVMSD unmediated services consisting of material posted by users”, and “as a means of identifying the person or organisation who is subject to whichever form of co-regulation is decided upon.”
63. In undertaking this approach, DCMS and Ofcom may be varying from the terms of the Directive and creating a framework which captures a greater number of services than is necessary or appropriate, as well as discriminating against services of the type currently provided by Joost.
64. We also note that DCMS has chosen to use the term “general control” in the Draft Regulations, as opposed to the term “effective control” which appears in the Directive. Paragraph 15 of the

*explanatory note states that general control means the same as effective control and “aims to capture the right level of responsibility in the hierarchy of a broadcaster: too tight and we might catch simply the individual employees who choose the schedules, but too loose and we might catch only the very highest levels – a broadcaster’s holding company, for example. Again, we believe that ‘general control’ is right, and has worked in practice.”*

- 65. Joost does not have a clear view on the practical implications of this at present, but would caution against the assumption that a definition or approach that has worked in the linear TV world is “right” and will also “work in practice” in the online, on-demand world. In the world of traditional broadcast services, for instance, even a linear broadcaster who subcontracts aspects of its service – for example, contracting out the overnight hours of its service to a separately owned and operated teleshopping service – may have a degree of effective control that does not exist in the online world, where any portal, platform or entry point service provider is capable of having hundreds of different content providers selecting, uploading and organising the accessible content.*
- 66. There may be no “catalogue” as such for some – or many – online services, and effective control over both the selection and organisation of content may not lie with one person. This does not justify the regulator arbitrarily choosing one person or entity, simply in order to have someone or something to regulate.*
- 67. Joost is concerned that editorial responsibility is another area where, from discussions in the VOD Working Group, it appears that DCMS and Ofcom may consider Joost as likely to fall within scope whilst a range of other online video services with TV-like characteristics would not. It is a further area where DCMS and Ofcom are in danger of creating arbitrary distinctions and discriminating with adverse effects. Specifically, DCMS and Ofcom appear to believe that sites which feature UGC content (which, as noted in paragraph 50 above, can be frequently be considered TV-like) do not exercise editorial control to the extent that would fall within scope, whilst Joost does. Such an assumption would be incorrect.*
- 68. In the online environment, we see a range of service providers each of whom exercises control to a greater or lesser degree over what might comprise the selection and organisation of programmes. At one extreme would be a pure hosting service that publishes all audiovisual content without any form of mediation or moderation whatsoever. There are few examples of this in respect of services carrying TV-like content. Most services featuring online video content, including popular services with UGC like YouTube and DailyMotion, exercise some degree of control by, for example, taking down inappropriate content, or regulating the types of content that can and cannot be uploaded (for example, operating a service dedicated to science fiction, or a service like Joost that has taken the decision not to publish any adult content) without necessarily having control over the selection of individual programmes.*
- 69. Any service provider that makes content available and actively promotes the availability of particular content could be seen as having some editorial responsibility, while perhaps a fully curated service would sit at the other extreme, where each individual programme is selected and packaged by the service provider.*
- 70. The Draft Regulations do not make it clear at which point on this continuum a service provider assumes “general control” (putting aside whether or not “effective control” is a more appropriate measure).*
- 71. Services such as Joost undoubtedly appear somewhere on the continuum described in paragraphs 68 and 69 above. In its present form, Joost can select which content owners it*

wishes to allow onto the platform, and has certain standards with respect to the content it publishes. Joost will also make certain decisions as to how its service is presented and promoted to users.

72. On the other hand, it is the content owners that decide how each of their titles is arranged in their channels on Joost, the territories in which such titles are made available and the period(s) for which such titles are made available, and therefore there are clear arguments that editorial responsibility lies with the content owner(s). Moreover, as online platforms evolve and seek operational efficiencies, Joost believes that content distribution will be increasingly be controlled and managed by the content owner using automated upload and publication tools. This would further suggest that editorial responsibility lies with the content owner, and not the platform operator.
73. It seems, therefore, that based on the wording of the Draft Regulations, there may be options in determining who, if any person, has general (or effective) control. In this regard, the regulator should have regard to the following:
- (a) Recital 19 of the Directive makes it clear that “the definition of media service provider should exclude natural or legal persons who merely transmit programmes for which the editorial responsibility lies with third parties”. This is not reflected in the Draft Regulations, but suggests that the intention of the Directive is to avoid regulating distribution platforms where there is a possibility that editorial responsibility may lie elsewhere.
  - (b) Recital 19 does not give grounds to include services like Joost within scope on the basis of greater involvement along the continuum of potential editorial functions whilst exempting others, e.g. those with UGC. The concept of a “mere conduit” may accurately describe the activities of some parties such as ISPs, but virtually no site that features UGC can realistically be considered a mere conduit. There are clearly activities that UGC sites undertake that are a form of mediation or moderation (e.g. takedown other than on legal grounds, requirements and restrictions on the types of legal content uploaded, aspects of presentation).
  - (c) If the regulator determines that it is the content provider that has general or effective control over the content that is made available, then there is a risk of creating a two tier system with content from EU-based content owners being subject to regulation, and content from producers in other jurisdiction being largely unregulated. This will put European content owners at a disadvantage.
  - (d) Policy makers should not elect to regulate platform operators purely for convenience. In the broadcast environment, the decision was taken to regulate broadcasters rather than platform operators. It does not follow that the platform operator, umbrella service provider or portal in an on-demand environment is analogous to that of a broadcaster selecting and organising the programmes within that service. If anything, it is more analogous to a satellite platform or cable network operator.
  - (e) A decision to regulate either of the parties will have a detrimental impact on platform operators in any event. If the platform operator is deemed to be the media service provider, then it is the platform operator that will need to bear the burden of compliance. On the other hand, if the content owner is deemed to be the media service provider, this creates a significant barrier to entry for smaller, independent producers and other content owners, and will put any platform operator that is established in the

EU at a very significant competitive disadvantage in attracting content compared to platforms established elsewhere.

**Use by Members of the Public – Subsection (5)**

74. Joost does not dispute that services must be those available for use by members of the public, but Joost does not believe that the Draft Regulations accurately reflect the spirit of the Directive, in particular Recital 16.
75. Recital 16 makes it clear that audiovisual media services are those “which are mass media, that is, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public”.
76. The wording of the Draft Regulation refers merely to “use”, without reference to “clear impact”, or a “significant proportion” of the public. Accordingly, the Draft Regulation does not include any element of materiality.
77. Joost recognizes the reference to services “intended” for reception, and which “could” have an impact, but Joost does not believe that this justifies a disregard of any element of materiality. Moreover, Joost believes it essential to have a de minimis threshold below which the Draft Regulations will not apply. Imposing regulation, however light touch, on businesses in their earliest stages of development will hamper innovation and/or drive businesses out of the jurisdiction.
78. Ofcom and DCMS should also take into account the low barriers to entry in the online video sector, and the possible effect this will have on the number of potentially regulated services. Entry to this sector is not simply the preserve of existing broadcasters and content owners, or new companies with deep pockets. This is a sector open to virtually everyone, with little need for technical expertise. One can now buy an e-commerce enabled website, (literally) in a box, from various high street retailers for as little as £35<sup>14</sup>, and professional, high quality streaming software, such as Adobe’s Flash product, as used by iPlayer, Hulu and many others, is now available off-the-shelf for a few hundred pounds. Most professionally-produced content currently available on “independent” online video sites (i.e. sites that are not affiliated to a broadcaster or content owner) is licensed on a non-exclusive, revenue share basis, and is therefore available to any new entrant to the market, and once a website has traffic, advertisers are likely to follow.
79. As a consequence, Ofcom and DCMS should understand that there may be hundreds, if not thousands, of players in this sector. Anyone with a website, a digital video camera, a few videos, and/or some display advertising is liable to be caught if Ofcom and DCMS do not take the most liberal route available to them.

**Ancillary Services – Subsections (6) and (7)**

80. Joost believes that Subsection (7), and in particular (7)(c), should be more narrowly defined. As mentioned in paragraph 55 above, online platforms such as Joost offer, or will offer, users the facility to chat with one another, form groups of common interest, rate or post comments on particular items of content, and share content with their friends, all of which could be considered “relevant ancillary services” within Subsection (7)(c), but are not, we suspect, the type of services that Ofcom wishes to regulate.

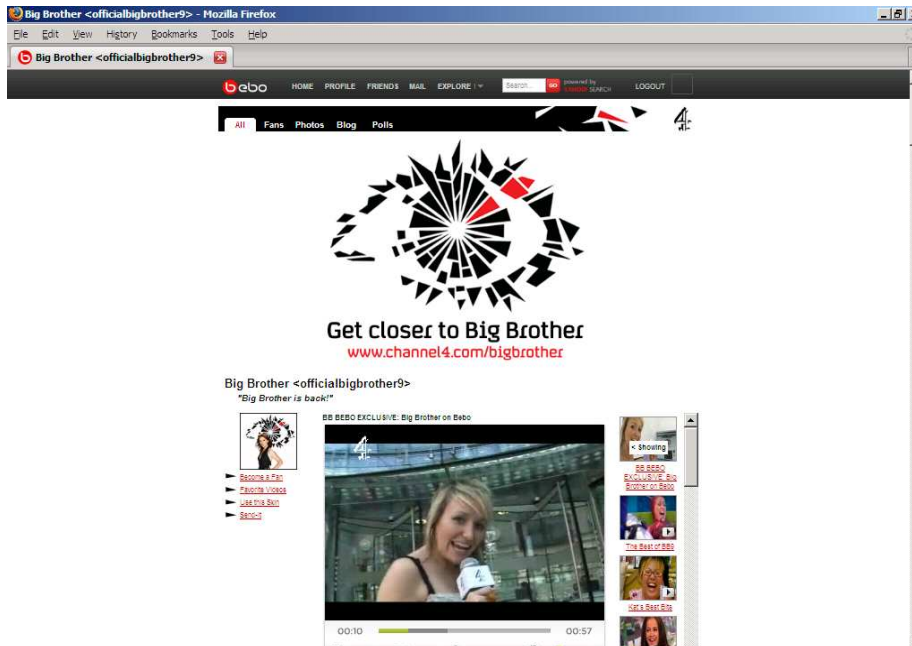
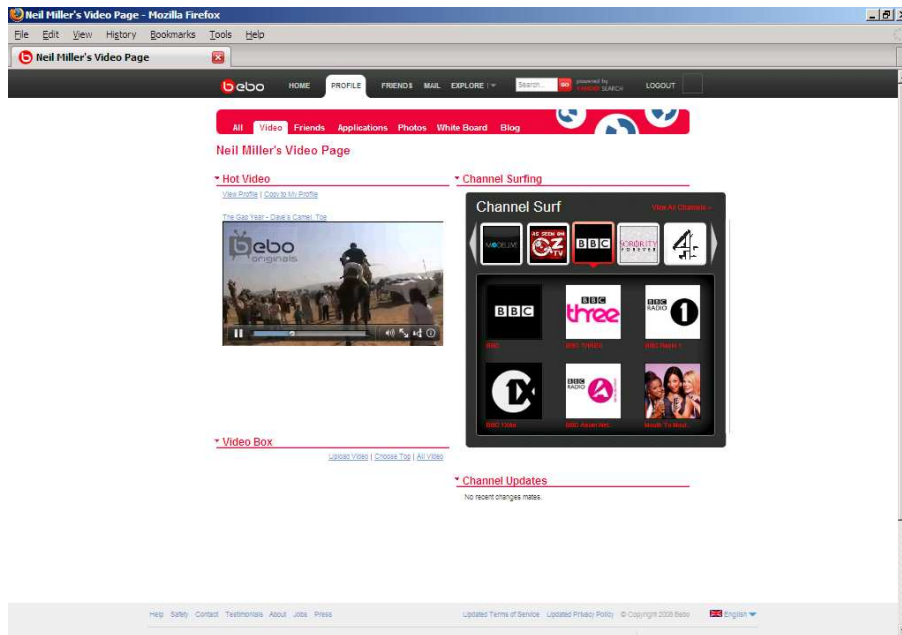
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<sup>14</sup> <http://www.mrsite.co.uk/>

81. *Joost believes that Subsections (7)(c) should be deleted, or made significantly more specific.”*

## Appendix 2

Screenshots from Joost and other audiovisual media services available to users in the UK



BBC <bbc> - Mozilla Firefox

File Edit View History Bookmarks Tools Help

BBC <bbc>

bebo HOME PROFILE FRIENDS MAIL EXPLORE Search powered by Yahoo! SEARCH LOGOUT

All Fans Photos Wall

**BBC**

Catch up on the last 7 days of BBC Television with **BBC iPlayer**

Lisa or Charli? - Strictly Come Dancing 2008 Round 9 Results - BBC One

become a fan Favorite Videos Like this Skin Send

**BBC**

bbc one

YouTube

0:05 / 1:28

Copy to Profile Send Post View Detail Report Abuse

More Video Info: [http://www.bbc.co.uk/1/ontv/companding\\_series\\_6\\_playlist](http://www.bbc.co.uk/1/ontv/companding_series_6_playlist)  
<http://www.youtube.com/watch?v=8d79c412280> F-O-C-B Round 9 Result: Ten celebrities danced, but only nine can remain in the contest, and the two unlikely couples with the lowest combined scores face the judges.

Want to see more? [Become a Fan](#)

Showing

Lisa or Charli? - Strictly Come Dancing 2008 Round 9 Results - BBC One

Lil' Chris's New Sidekick - Never Mind The Buzzcocks - BBC Two

A Colourful Past - Outnumbered - BBC One

See All Videos

MySpaceTV Videos: Russell Brand and David Baddiel - book launch by Russell Brand - Mozilla Firefox

File Edit View History Bookmarks Tools Help

MySpaceTV Videos: Russell Brand...

myspace.com

Video Search powered by Google

Home Browse Find People Forums Music Video More Log In Sign Up

myspacetv Video Charts Channels My Videos Upload Videos

Russell Brand and David Baddiel - book launch

Video Details

Access: 04/11/2008  
 Runtime: 5:01  
 Views: 9,912  
 Comments: 59  
 Tags: russell brand david baddiel comedy  
 Categories: Comedy and Humor, VideoBlogging

Featured Channels

By Russell Brand

Subscribe

[adultswim.co.uk] Adult Swim UK

NutsTV Nuts TV

Elita - All Girl Review Series

Being Dancin' Homecoming Nuts TV Mock-Contest

MySpace Tripart Comedy Awards

More Videos

From This User

Russell returns from Radio 2  
 Posted by: Russell Brand  
 Runtime: 2:48  
 Plays: 65,935  
 Comments: 272

Russell Brand - Articles of Faith  
 Posted by: Russell Brand  
 Runtime: 3:43  
 Plays: 9,955  
 Comments: 58

Russell Brand - radio show exclusive video  
 Posted by: Russell Brand  
 Runtime: 3:43  
 Plays: 9,955  
 Comments: 58

Description: Russell Brand joined onstage at The Prince Charles Cinema in London's West End for the launch of his new book Articles of Faith

94% Like

Share

Video URL: <http://myspacetv.com/index.cfm?fuseaction=vid>  
 Send this URL to your friends

Video Code: <http://www.myspace.com/index.cfm?fuseaction=vid>  
 Add this code to your profile

Comments

Listing 1-10 of 59

From Comment

MySpaceTV Videos: Channels: Featured - Top Plays - Today - Mozilla Firefox

myspace.com

Channels: Featured - Top Plays - Today

Listing 1-20 of 179

CMTV: CollegeHumor Original Videos Plays: 70,849	DESTROY TV Plays: 58,280	DANCE FLICK Plays: 52,416	Runawaybox Plays: 38,240
Diagonal Plays: 23,088	Saturday Night Live Plays: 20,864	proudly supports TRIDENT Plays: 19,881	National Geographic Plays: 12,951
Family Guy Plays: 12,214	artist on artist Plays: 10,613	backstage VIDEOS Plays: 10,000	Crickle Plays: 9,108
TMZ Plays: 7,812	ZACK AND MIKE MAKE A PORN Plays: 7,161	Showbiz Central Plays: 7,161	SEX HEALTH GURU Plays: 7,161

MySpaceTV Videos: Five News Video Channel - Mozilla Firefox

myspacetv.com

five news with Natasha Kaplinsky

five.tv/news for more stories

Five News

View My Page | Update my profile | Add to Friends

16 years old  
LSE  
Total Plays: 466,768  
Subscribers: 454

Subscriptions

The Works  
Videos: 1  
Plays: 28,250  
Subscribers: 82

Five News has all the top stories, including the latest on Baby P and the illegal gambling injection causing controversy in the UK.  
Added: November 17, 2008  
Runtime: 2:08  
Plays: 193  
Comments: 0  
Tag: [illegal injection baby p](#) & [skidoo](#) [michael](#) [category: Richard James](#) [video](#) [add](#) [profile](#) [upload](#)

Five News's Videos

Five News on Misspase Monday 17th November 2008 2:08 Added: 8 hours ago Plays: 193 Comments: 0 92%	Five News on Misspase Friday 14th November 2008 0:00 Added: 3 days ago Plays: 0 Comments: 0 0%
Five News on Misspase Thursday 13th November 2008 2:02	Five News on Misspase Wednesday 12th November 2008 2:16

YouTube - Broadcast Yourself - Mozilla Firefox

File Edit View History Bookmarks Tools Help

YouTube - Broadcast Yourself.

Sign Up | QuickList (0) | Help | Sign In

Home Videos Channels Community

Search Videos Search advanced Upload

Channels All - Most Viewed (This Week)

Most Subscribed Most Viewed

All Today This Week This Month All Time Display Advertisement

Autos & Vehicles	<b>BBC</b> Type: Director Videos: 3,304 Video views: 372,702 Style: Broadcaster	<b>08lampard08etc</b> Type: Standard Videos: 3 Video views: 302,075	<b>Novova</b> Type: Director Videos: 3,393 Video views: 234,470 Style: Art	<b>S4M02K8</b> Type: Standard Videos: 41 Video views: 291,918
Comedy	<b>itn</b> Type: Director Videos: 2,765 Video views: 253,513 Style: Broadcaster	<b>Paperlilies</b> Type: Director Videos: 152 Video views: 232,742 Style: Variety	<b>HUTCH068</b> Type: Guro Videos: 135 Video views: 214,764 Style: Educational	<b>honeybee26</b> Type: Standard Videos: 19 Video views: 209,894
Education	<b>mufo49</b> Type: Standard Videos: 35 Video views: 197,624	<b>scopowermaster</b> Type: Standard Videos: 12 Video views: 168,699	<b>GoalsOnline</b> Type: Standard Videos: 23 Video views: 173,702	<b>EastSussexRegio...</b> Type: Standard Videos: 6 Video views: 160,538
Entertainment	<b>HenryGraham13</b> Type: Standard Videos: 22	<b>NeiqhboursRachel</b> Type: Standard Videos: 229	<b>bolpaal</b> Type: Standard Videos: 29	<b>diagonaluk</b> Type: Director Videos: 367
Film & Animation				
Gaming				
Howto & Style				
Music				
News & Politics				
Nonprofits & Activism				
People & Blogs				
Pets & Animals				
Science & Technology				
Sports				
Travel & Events				
Comedians				
Directors				
Gurus				
Musicians				
Non-Profit				
Partners				
Reporters				
Sponsors				
YT Screening Room				

YouTube - BBC's Channel - Mozilla Firefox

File Edit View History Bookmarks Tools Help

Do you want Firefox to remember this password? Remember Never for This Site Not Now

Remember Never for This Site Not Now

YouTube Videos Channels Community Upload

Sign up | Subscribe | Help | Sign in

Search

BBC

Catch up on the last 7 days of BBC Television with **BBC iPlayer**

Videos Favorites Playlists Groups Subscribers Subscriptions

**BBC** [Subscribe](#)

**BBC**  
Style: Broadcaster  
Joined November 11, 2005  
Last Sign In: 18 seconds ago  
Subscribers: 41,411  
Channel Views: 3,463,791

**itn** **Paperlilies**

it's Bryony Makes a Zombie Movie...

The story of how YouTube superstar Bryony Matthews, aka Paperlilies, set out to make a zombie movie by finding writers, cast, crew and everyone else via the internet. The film follows the London girl as she goes from bedroom webcam to West End premiere in just four months.

Tell us what you think!

Country: United Kingdom

#12 - Most Subscribed (All Time) - United Kingdom

#2 - Most Subscribed (All Time) - Directors - United Kingdom

#17 - Most Subscribed (All Time) - Partners - United Kingdom

[Report profile image violation](#)

**BBC Children in Need** [Play All](#)

Don't just watch - donate as its all to raise money for BBC Children in Need and continue helping disadvantaged children and young people across the UK. To donate go to <http://www.bbc.co.uk/podsey/06.htm>

**Strictly Come Dancing 2008 - BBC One** [Play All](#)

Connect with BBC

[bbc.co.uk](http://bbc.co.uk)

[Send Message](#) [Add Comment](#) [Share Channel](#)

[www.uk.youtube.com/BBC](http://www.uk.youtube.com/BBC)

Playlists

Thanks for your feedback and comments on the BBC channel

Because of the way that the BBC is funded in the UK through the licence fee, we cannot make videos available outside of the UK.

The [BBCWorldwide](http://www.youtube.com/BBCWorldwide) channel is run by our commercial subsidiary, BBC Worldwide, so does contain BBC videos that are available across the world.

YouTube - itn's Channel - Mozilla Firefox

File Edit View History Bookmarks Tools Help

YouTube - itn's Channel

Sign Up | Quickstart | Help | Sign In

Search

ENTERTAINMENT  
Welcome to ITN's YouTube Channel

Videos | Favorites | Playlists | Subscribers | Subscriptions

**ITN Entertainment** [Subscribe](#)

**itn**  
 Public Broadcaster  
 joined: June 04, 2006  
 Last Sign In: 2 hours ago  
 Subscribers: 9,478  
 Channel Views: 606,616

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 ITN.co.uk has thousands of exciting news videos like the ones here. As the UK's premier TV news company - we have everything from the top stories, breaking footage to awards, sport and music. It's all at [www.itn.co.uk](http://www.itn.co.uk)

Age: 24  
 City: London  
 Hometown: London  
 Country: United Kingdom  
 Website: <http://www.itn.co.uk>

[ITN's Videos](#) [Subscribed \(All Time\)](#) [Unsubscribe](#)  
[ITN's Favorites](#) [Subscribed \(All Time\)](#) [Unsubscribe](#)  
[ITN's Playlists](#) [Subscribed \(All Time\)](#) [Unsubscribe](#)  
[ITN's Comments](#) [More](#)

[Report profile image violation](#)

0:38 / 2:20

From: [Views: 203](#) [Comments: 1](#)

[Report unhelpful feedback for channel video quality](#)

**Connect with itn**

<http://www.itn.co.uk>  
[ITN Facebook](#)  
[ITN MySpace](#)  
[ITN Twitter](#)  
[ITN YouTube](#)  
[ITN Channel](#)

<http://www.youtube.com/itn>

**ITN ENTERTAINMENT**  
 Want a daily fix of showbiz and sports news? The ITN channel is the place to be. To get more on your favourite celebs, sport and funnies at [www.itn.co.uk](http://www.itn.co.uk)

**Playlists**

- [ITN's 7 Videos](#) [Play All](#) [Share](#)
- [X Factor 13 Videos](#) [Play All](#) [Share](#)  
All the latest from X Factor 2008
- [Guinness World Records 10 Videos](#) [Play All](#)

Home - Joost

Home Friends Groups Shows Music Film

Hello, john22334 | Settings | Logout

Search for Channels and Videos

channel | **Our Picks** | Popular

- X Factor Finalists 2008 - Hero
- Oceans of Europa
- How To Cope With Rejection
- Ep.1: Vast Food Nation - The Gre Death

Embed | Share | Shout | Add to My Queue | Favorite | Comment | Tag

**X Factor Finalists 2008 - Hero**  
 Tags: [Add tag](#)

X Factor Finalists 2008 - Hero

[more details](#)

**Recently Watched Shows**

- Holes In Heaven: HAARP ...  
Examines the ...
- Peep Show 103

**JoostFeed**  
 friends | everyone | rss

- realtrap signed up (20 seconds ago)
- dominionini watched The Animatrix - Kid's Story (20 seconds ago)
- Insty watched BassHunter - All I Ever Wanted (20 seconds ago)
- chocolateocean1 watched Beyoncé - If I Were A Boy (21 seconds ago)
- Steffen Bus watched Miranda Lambert - Me And Charlie Talking (25 seconds ago)

Classical - Joost

Home | Friends | Groups | Shows | Music | Film













Hello, john2224 | Settings | Logout

Search for Channels and Videos

### Classical

Channels Videos A-Z Recent Popular View

1 2 3 4

 Deine Lakain - Generators 04:00	 Ottmar Liebert - Luna Negra - Albatross 03:14	 Lucio Dalla - LN.R.I. 03:54	 Andreas Martin - Andreas Martin - Sam Leben für die Mushi 04:33
 Ottmar Liebert, Luna Negra - Snakecharmer 03:52	 Rasputina - The Olds HeadBoard 02:50	 Eldar - I Remember Vhen 05:08	 Jeff Wayne - The Spirit Of Man (Video) 04:15
 Deine Lakain - Return 03:46	 Charlotte Church - Moodswings (To Come At Me Like That) 03:07	 John Barry - Smile 02:24	 The 5 Browns - Flight of the Bumble Bee 01:22

**Music**

- Classical
- Country
- Dance & Electronic
- Hip hop & Rap
- Interviews & Profiles
- Jazz & Blues
- Latin
- Metal
- Pop
- R&B & Soul
- Rock & Indie
- World & Folk

**Film**

**Shows**