



#### **WHO WE ARE**

Viasat Broadcasting, with its main offices in London, Chiswick, is the broadcasting division of Modern Times Group MTG AB, and operates businesses which make it the largest broadcaster of free TV and pay TV services in Scandinavia and the Baltics as well as one of the leading broadcasting groups in Europe reaching viewers in 25 countries.

Viasat Broadcasting currently produce and operate 25 free TV channels and more than 25 pay TV channels which are received throughout Europe with perhaps the best known channels being those broadcast under the TV3 brand. 23 of these channels are operated from the UK and regulated by Ofcom.

MTG's broadcasting division also operates the Viasat satellite platforms in Scandinavia, the Baltics and the Ukraine, and distributes television services via IPTV, mobile phones, and the Internet.

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A company within MTG

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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?

Yes, S. 211 needs to be amended in order to cover the audiovisual media services, as proposed by the DCMS in the consultation paper, mainly under point 24.

## 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?

Yes.

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?

No.

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?

No.

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?

Further specification and possibly examples will be required in the law and/or guidelines, in order to avoid confusion, legal uncertainty and disputes between the various VOD providers (acting either more as aggregators and/or as content/package of programming providers).

Here is an example where confusion and disputes amongst providers are likely to arise:

Studios and major broadcasters offer their branded services via third party providers' websites. Such providers include in their service both their content and content from studios or other broadcasters. When the studio for example makes the selection of the movies (i.e. under the agreement it just has the obligation to provide x number of movies over a certain period) and also the content is branded with its name and has its own "area" in such website/service, then such studio should be responsible for that content.

In this service, <http://www.maxdome.de/>, on the right hand side, there are links to special services from other providers, for example Warner; [http://www.maxdome.de/special/warner\\_tv/?cm\\_sp=Teaser\\_nonContent\\_rechts--WarnerTV--home](http://www.maxdome.de/special/warner_tv/?cm_sp=Teaser_nonContent_rechts--WarnerTV--home)

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**Should it transfer to the provider of the aggregated service?**

First of all, a service (being either a package with a limited number of films offered as part of a bigger service or a major VOD offering) can only be under one jurisdiction and have one “audiovisual media services provider” responsible for it. This seems clear both in the TWF and the AVMS. In addition, same as for tv channels, we believe that for online services the choice of jurisdiction should work in a similar way (i.e. you may have a tv channel/ frequency where during various parts of the day different broadcasters are responsible for the content – provided certain conditions are fulfilled; e.g. 4 hours a tv shopping channel, 4 hours fox news, 4 hours a travel channels and 4 hours an adult channel).

The rules should point to one service provider having responsibility for the content of the “audiovisual media service” (with the meaning in the Directive). So if there is one service/ website which includes content/“audiovisual media service” for which the editorial control belonged to various providers, each such provider individually should be responsible for the content/“audiovisual media service” over which he holds the editorial control. It is not reasonable for the aggregator to have responsibility for content over which it has no control. With regards to the pin protection functions, (same as with channels being offered as part of satellite/ cable/ iptv platforms) the “audiovisual media service provider” should be responsible towards the authorities, while there will be contractual arrangements in place between the aggregator/ platform operator, according to which the aggregator can be responsible for inserting the pin protection if needed and for the programmes directed by the provider.

- 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?**

Possibly on purpose, the Directive leaves outside its scope the services that come outside the EU and do not have a satellite uplink or do not use satellite capacity in the EU. It is worth noting that according to the directive one could even have a linear tv channel that is distributed via IPTV, cable, internet, DTT in the EU (but not satellite) with its head office and editorial control outside the EU and outside a signatory of the Convention of Transfrontier television, and the content of this channel is not regulated under any EU country (according to the Directive). Similarly, we would have to accept that on line on demand services that are

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actually based outside the EU do not fall within the Directive and are not supposed (according to the directive) to be regulated in the EU.

Notwithstanding this, and outside the scope of the Directive and its implementation, every Member state would have the right to deal with the issue of services which come outside the EU (and which do not fall within the Directive) as they chose appropriate. It would however be totally unfair and not in line with the commercial reality to place any direct liability on the content aggregators/ platform operators. It would however be acceptable for English law or regulations to include provisions for stopping the transmission or retransmission of services coming outside the EU the content of which seriously contravenes with English and European law.

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, or more accurately websites where video on demand services are offered, could also offer user generated content or services of delivering DVDs and other merchandise, which however are outside the scope of the directive and its implementation. With regards to the difficulties in determining whether a service provider has general control, please see points 5 and 6 above.

9. **Is it appropriate to treat scheduled and on-demand parts of the same overall service differently for regulatory purposes?**

Yes, of course it is appropriate, as this is what is required under the Directive and there is no scope for changing this.

**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?**

As for the service providers and the regulators, it will be pretty clear what is linear and non linear content and there should not be confusion on that area.

There might be some confusion on the side of the viewers, as it will not be easy for all of them to understand (without additional information) that parts of the same (in their eyes) service is regulated by different authorities and often different jurisdictions. However this is unavoidable according to the current EU law as well as the main principles of EU law. This is already happening with regards to linear channels when channels targeting one country are regulated in different countries and even channels on the same frequency are regulated by different authorities and controlled by different broadcasters.

The only suggestion to help reduce confusion is to have a requirement of making available to the viewers the appropriate information in a commercially reasonable way, so that they will know where to complain if need to.

10. **Do you agree that the criteria at paragraph 9 (of Part 3A) are the right ones for determining the best regulatory opinion? Are there any other important criteria?**

We agree with these criteria.

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11. Are there any possible co regulatory models you think we should consider? If so, please describe them and say why they meet the criteria.

No.

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

The position will be clearer and there will be more certainty if there is some sort of notification procedure. In such notification though, it should be taken into consideration that a notification for a certain service (in the meaning understood by the viewers/ customers i.e. a website) should cover only those “audiovisual media services” in such website that are under the control of the particular “audiovisual media service” provider. So, in the example set out under 5 above, the operator of Maxdome would be registered and responsible for the content for which they had direct control of, but Warner, Prosieben etc. would be registered and be responsible for the content which they selected, have control over and which is under their branded pages.

13. Who should be responsible for interpreting the legislative definitions and determining which services are subject to the regulatory framework? The Government, Ofcom or the appointed industry co-regulator?

The Government and Ofcom.

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

Ofcom.

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

The co-regulator; in a similar way to the advertising standards authority.

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

Warnings, notices, restriction orders, fines and ultimately, termination of the registration.

We do not have a strong view as to whether the co-regulator or Ofcom should apply the sanctions; but it seems reasonable for the co-regulator to handle the complaints, make the decisions and issue warnings. But Ofcom should be involved for the cases of fines and other stricter sanctions.

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?

This should work in a similar way as the regulation and procedure for linear channels.

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

Option 2 seems the most reasonable and most effective solution.

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## ADVERTISING IN ON-DEMAND AUDIOVISUAL MEDIA SERVICES

19. Should the controls on advertising in video-on-demand services cover
- advertisements which appear onscreen as a result of the user accessing a particular video on demand programme? Yes.
  - advertisements which appear on-screen as a result of the user accessing a particular video-on-demand service? No.

There should be a level playing field with linear channels; not an additional control of the advertisements on the internet other than the control that is currently in force for all other internet websites.

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

Yes. The Advertising Standards Authority.

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?

By Ofcom in the same way as for linear services.

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

Yes.

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?

No, it should be handled in the same way as for linear 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? NO. or
- the body or bodies that regulate programme content on these services? YES.

25. Should sponsorship of video-on-demand programmes and services be regulated by

- the body or bodies that regulate advertising on these services? NO or
- the body or bodies that regulate programme content on these services? YES.

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## PRODUCT PLACEMENT

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

Product placement should not be prohibited. It should be allowed to the greatest extent permitted by the Directive.

Product placement is very important and will significantly help European productions, as part of their funding will be through product placement.

European productions will be in a better position to compete with US productions which are produced with the "assistance" of a great amount of product placement.

In the new technological environment, where viewers can skip adverts with PVRs and split screens which allow them to zip back and forth to different channels the time that they do not broadcast any adverts, broadcasters and advertisers need to find other efficient ways to reach the audience, in order to keep their revenues from advertising.

If we want the UK and European television and programming to compete internationally in the media market place, we must look to the provision of efficiencies and the removal of historic trade practices which limit business growth.

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)?

The programmes available on ondemand services covered by the directive will be (to a very very large extent) the same with the programmes shown on linear services. So, beside the fact that there is no reason for the regulation on product placement to be different on linear and non linear services, additionally, in practice there will not be any benefit of allowing product placement only for non-linear services.

Product placement should be allowed to the largest extent permitted by the Directive.

28. What advantage would there be in permitting product placement in any or all specified genres? If so, which genre(s), when and why?

There will be a great benefit for all genres in allowing product placement for European productions. See under 26 above.

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

Ofcom will need to issue guidance regulating product placement. The undue prominence rule seems a good and sufficient way for protecting audiences. But also information and awareness to the viewers of the existence of the product placement will help.

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

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Guidance, in combination with sufficient information and awareness to the viewers will help. Please note that the viewers prefer to see programmes with product placement rather than have to pay for them higher fees or not view them at all. Also, the audiences are familiar with the product placement in the American programmes, and are not “protected” by it. So, why should they be “protected” from the product placement in European programmes to the detriment of the development of European productions and the viewers’ choice of programming? The guidance included in the Directive, already includes a more than sufficient regime for protecting the viewers from any potentially negative effects product placement. The rules should definitely not be made stricter.

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

Same rules should apply. See also under 27 above.

32. Should prop placement continue to be permitted?

Yes.

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?

As long as editorial independence and integrity is retained, the value does not matter.

Also, it would be difficult and impracticable to set a value having in mind that for productions of different value, different value of prop placement would be of much different importance.

34. What other ways are there of ensuring that the UK meets the Directive’s requirements that prop placement above a ‘significant value’ must be treated as product placement? Which test is best and why?

See 33 above. But if need be such test, then “significant” could be 40% of the production budget.

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)?

By Ofcom (both for linear and non linear services).

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?

Yes. It would be very unreasonable and impracticable and would place a heavy burden on the broadcasters to have to edit it out.

37. How should product placement be signalled to viewers?

Product placement can be signalled in a similar way to sponsorship and therefore creating transparency and making the viewer aware of the existence of product placement and the relevant products which were placed.

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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)?

By Ofcom both for linear and non linear services.

#### NON-EU SATELLITE CHANNELS UPLINKED FROM THE UK

39. Should there be arrangements of some kind to regulate broadcasts for broadcasters which are uplinked from the UK?

For the cases when according to the directive, the UK is the jurisdiction for such broadcasts, then non EU channels should comply with the same rules as EU channels; and therefore for the case of the UK, they should have to obtain an Ofcom licence. If Ofcom finds this hard in practice, then it would be acceptable to still enforce the UK law regime for such channels, - even if they have not acquired an Ofcom licence-, and make them comply with the applicable regulations.

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?

The powers should be same or similar with the powers held for the case where an EU channel regulated in the UK broadcasts unacceptable content. So, if for certain cases of severe or repeated breach of rules, Ofcom would have the right to take away their licence and stop them from broadcasting, the same should happen for the non EU channel. It seems that in that case, the only practical way to enforce the rules would be to order the uplink company to stop the distribution. This could be done via a court order but DCMS may want to consider giving powers to Ofcom to do that, under the conditions of fairness and proportionality.

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

No responsibility for their content. But if they are asked via legal procedures to stop the uplink, they should have to comply with such order.

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?

See points 39 and 40 above.

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