



ISPA response to consultation on proposals for implementation of the audiovisual media services directive

ISPA UK

The Internet Services Providers' Association (ISPA) UK is the trade association for companies involved in the provision of Internet Services in the UK. ISPA was founded in 1995, and seeks to actively represent and promote the interests of businesses involved in all aspects of the UK Internet industry. ISPA currently has over 190 members, representing around 95% of the UK Internet access market by volume.

A full list of members is available at:
http://www.ispa.org.uk/cgi-bin/member_list.cgi

Overview

ISPA would like to raise a number of over-arching issues that it would like the Government to consider in its implementation of the AVMS Directive.

- The Directive states that there is scope for the implementation of the Directive to be light-touch. This is a policy that ISPA would support. However, ISPA would argue that neither the narrative nor the feel of the consultation paper is light-touch.
- ISPA has continued concerns over the definition of 'TV-like' services, which is the definition taken from the Directive and used in the consultation document. This gives minimal scope for manoeuvre and ISPA feels could potentially catch services that it was not intended to in the future.
- The consultation paper asserts that video on demand is not currently regulated, but should be captured by the Communications Act. ISPA notes, however, that criminal laws apply to online video services, such as material that falls under the Religious and Racial Hated Act. ISPA would question the necessity to duplicate the regulation of such content through criminal law and regulation.
- ISPA notes that the draft regulations are not included in the consultation document. The inclusion of the draft regulations would have enabled stakeholders to comment further on the applicability, effectiveness and operational impact of the implementation.

Scope: The Definition of On-demand Audiovisual Media Services

ISPA feels that the proposed definition of an on-demand audio-visual media service is too wide and captures additional content to that required in the Directive. The Directive states that an audiovisual media service is defined by "viewing of programmes at the moment chosen by the user". The implementation paper, however, extends this to include editorial responsibility including material not under a provider's direct control.

ISPA would urge the DCMS to tighten the definition of audiovisual media services to provide greater clarity for companies about what will be included in the scope of the Directive. ISPA believes that the implementation of the Directive as set out could stifle innovation in the UK, as the lack of clarity is likely to cause confusion among potential investors.

Regulation of On-Demand Audiovisual Media Services

ISPA questions whether the requirement for a co-regulatory system in this area has been provided. The Association for Video On-Demand (ATVOD) already operates a successful self-regulatory structure in this area and, as a self-regulatory body, ISPA would urge Government to exhaustively explore the possibilities of a self-regulatory solution before imposing regulation.

ISPA would argue that the Directive makes provisions for the continuation of existing successful self-regulatory systems in Recital 36. ISPA members would further argue that the proposed Government implementation would threaten to disrupt the existing self-regulation of ATVOD and the Advertising Standards Authority (ASA).

In relation to sanctions, ISPA would like to seek clarity from government that any system of sanctions imposed would not be more exacting than for broadcasting. ISPA does not want to see a regulatory system which is more draconian for online content than offline content. For instance, ISPA would like to seek clarity that the online model will not apply *ex ante*.

ISPA feels that the criteria set out in paragraph 9 extends beyond that which is required by the Directive. ISPA would suggest that the third criterion, 'reasonable consistency', is not a requirement of the Directive and would not represent light-touch regulation as has been committed to by the Government.

ISPA has further concerns over dispute resolution. ISPA would like to see greater clarity over how disputes will be resolved and is particularly concerned that the proposed implementation does not suggest an adjudicator in a dispute between a service provider and the regulatory body. ISPA feels that initial attempts to resolve disputes should take place between the service provider and the regulatory body, as is currently operated with consumer complaints. ISPA would be happy to provide details of the self-regulatory complaint mediation service that we deliver to our members.

Advertising in on-demand services

ISPA members must be given the opportunity to investigate possible new revenue streams. Much of the financial backing for future investment in innovation with regards to the Internet is likely to come from the potential revenue provided by advertisers. Whilst ISPA understands the UK Government's emphasis on maintaining editorial integrity, we would urge the Government to seek a sensible balance in its approach to issues such as product placement.

ISPA members are concerned that the proposed transposition of the Directive would have unintended consequences for advertising alongside video on-demand content. ISPA would like the Regulations to clarify that controls on on-demand services will not cover all of the advertising contained on that page, but rather advertising viewed as a direct result of selecting that on-demand service.