



Response to DCMS Consultation on Audience protection standards on Video-on-Demand Services

About TAC

TAC is the trade association for the independent TV production sector in Wales. There are over 50 companies in our sector, producing content for the BBC, ITV, Channel 4, Channel 5 and Sky as well as other commercial broadcasters. They produce almost all the original television and online media content for the Welsh-language broadcaster S4C, and a variety of radio productions for UK-wide networks. They are also active internationally, selling programmes and formats in many territories worldwide, as well as being involved in co-productions.

Response to Questions

Questions on jurisdiction

Q1 - Should VoD services not currently regulated in the UK be brought within UK jurisdiction? Yes/No? Please explain your reasoning.

Yes. The consultation document rightly points out that the current unequal regulation between domestic linear services and VoD services means there is not an equal level of regulatory compliance which can competitively disadvantage domestic broadcasters and also puts audiences at risk. The rise in VoD viewing since the pandemic in 2020 has made this issue all the more acute, with ever-greater number of people of all ages watching content on VOD services. As the consultation paper states audiences are not aware of the regulatory gap and this can lead to harmful content being seen by younger audiences for example.

Our members make programmes for both domestic and international VOD services and therefore would welcome greater alignment between the two for clarity and to meet UK audiences' expectations.

Q2 - If non-UK VoD services are brought within UK jurisdiction, how should the parameters of capture be measured?

We concur with the consultation that *"Giving a power to Ofcom to designate services outside the UK based on a number of factors including risk or potential harm, or simply identifying the services in legislation which should be captured might be simpler and more effective. This approach may also be more proportionate and dynamic, enabling Ofcom to revise thresholds or metrics as audience habits change."*

A key principle should be that it is the potential to cause harm which is at the centre of the regulatory structure, rather than for example the size of the organisation or service.

Questions on scope of regulation

Q3 - What type of regulatory system should be used - notification, licensing or another type of system? Please explain your reasoning.

It would seem that Licensing would be the preferable option. This requires the provider to ensure they meet the necessary standards ahead of distributing the content. It is therefore more effective than a notification process which is focused on retrospective action and therefore harmful material has already been distributed and impacted negatively upon audiences.

Q4 - Should VoD services be brought under additional obligations? Yes/No? What additional obligations should VoD services have? Please explain your reasoning.

We believe that VOD services should also be brought under the fit and proper test, as used by Ofcom in determining whether those owning or seeking ownership of a UK broadcaster are appropriate to hold a licence.

Questions on bringing VoD services under the Broadcasting Code

Q5 - Do you think that VoD services should be regulated under the Broadcasting Code? Yes/No? Please explain your reasoning.

In principle, given that UK linear broadcasters are regulated under the Code, we believe that this should be extended to VOD services. The Broadcasting code is more extensive regarding protections against harm and offence. The protections for due impartiality, elections and fairness are also very important. As earlier stated audiences will not be aware of regulatory differences between the Code and the ODPS rules so applying the Broadcasting Code evenly across linear and VOD services will provide a clearer and more protective regime.

Q6 - Are there any specific elements of the Broadcasting Code (or standards set out in legislation) that should not apply to some or all VoD services? If so, what elements should not apply and to which VoD services?

We do not think there is a need for any exemptions.

Questions on audience protections

Q7 - Do you think the current protections used by VoD services provide a sufficient level of protection for audiences? Yes/No? Please explain your reasoning. In particular, if no, what additional measures should be provided?

We do not believe the current VOD services protections are sufficient. Elements of the Broadcasting Code such as issues of harm, offence, fairness, accuracy etc. are either partly or wholly missing from the current VOD protections.

Q8 - Should there be increased conformity on protection tools and warning systems across all VoD services to provide more consistency for UK audiences? Yes/No? Please explain your reasoning.

Consistency is very important for UK audiences to understand the level of protection which they can expect and how it is applied.

Q9 - Should a UK classifications/warnings system (such as the age classification system operated by the BBFC) be mandatory? Yes/No? What types of content would be most appropriate to require classifications/warnings? Please explain your reasoning.

The current process of compliance with Broadcasting Code as regulated by Ofcom pre-transmission should be retained for television. Ofcom can also act if there are complaints post-transmission, which is acceptable.

This approach should be coupled with a system of making VoD services responsible for classification, in particular in the case of programmes containing high levels of violence or sexual content.

Questions on the impact of changes to regulation

Q10 - What impact could the proposals set out in the consultation document have on VoD providers and the delivery of services? What are the potential direct and indirect costs of additional regulatory requirements for VoD providers? These would include (but are not restricted to) potential costs associated with standardising audience protection measures, updating library content to conform with the Broadcasting Code and/or new standards of warnings/guidance like BBFC ratings. If possible, please provide impact/cost for each proposal separately.

We are not in a position to comment from a service provider's point of view. However from the production sector's point of view we would like to see an extension the current Terms of Trade protections for producers' IP rights, as set out in the Communications Act for the UK PSBs and commissioning, to BVOD services.

These Terms of Trade protections have facilitated the growth of the UK production sector to be one of the leading AV content producers in the world. However failure to fully read across such protections to BVODs would be a backward step, if it meant that ensure that UK production companies were not able to benefit from any future exploitation of the content.

Q11 - What impact could the proposals set out in the consultation document have on UK audiences and the service that UK audiences receive (this is in addition to the benefits of increased audience protection)? To what extent would additional costs be passed onto consumers, for example through higher subscription fees?

Any increase in regulatory compliance has the potential to cause increased costs which the company choose to pass on to the consumer. However the VOD market is a highly competitive one and any rise in subscription costs would potentially have a negative impact on any given service's subscriber base, therefore it is perhaps questionable whether there would be significant rises which would harm the consumer.