



## Pamasahe

<b>Type of case</b>	On Demand
<b>Outcome</b>	In Breach
<b>Service</b>	Amazon Prime Video
<b>Category</b>	Breach of ODPS Rule 11 (s.368E(2) of the Communications Act 2003)
<b>Summary</b>	A film included Prohibited Material <sup>1</sup> which was made available on the Service in breach of Rule 11 of the ODPS Rules.

## Introduction

Amazon Prime Video (“Prime Video” or the “Service”) is a streaming service providing a mix of on-demand programming and live TV channels. In accordance with the provisions of the Communications Act 2003 (the “Act”) the on-demand element of the Service has been notified to Ofcom as an on-demand programme service (“ODPS”) by Amazon Digital UK Ltd (the “Service Provider” or “Amazon”).

*Pamasahe* (“the Programme”) is a 2022 Filipino film which was made available on the Service in the United Kingdom until 9 January 2024. The description of the Programme on Prime Video read “*The first lead role of sexy actress Azi Acosta directed by Roman Perez Jr. A penniless mother, with her infant child, takes on a journey by land and sea to find her husband in Manila. But this trip won’t be free for she has to use her body to get to her destination.*” The film was given a rating of “18+” by Prime Video.

Ofcom received a complaint about the film from a viewer who was, amongst other things, concerned about the inclusion of a baby in scenes depicting sexual activity between adults. The content was viewed by the complainant on Prime Video on 2 November 2023. The viewer sent a letter of complaint to the Service Provider via Special Delivery but received no response or acknowledgement. The complainant also said they subsequently tried to complain by telephone but

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<sup>1</sup> As defined in s.368E(3) of the Communications Act 2003

were eventually cut off having been transferred between departments. The complainant then made their complaint to Ofcom.

## Programme Summary

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The scene in question began at approximately at 1:27:00 in the Programme and depicted a baby shown in close proximity to a graphic sequence of sexual activity between a man and a woman in a bedroom. This included a lingering shot showing the baby and the couple at the same time.

Ofcom considered this content raised potential issues warranting investigation under [ODPS Rule 11](#) ("[ODPS Rule 11](#)") which reflects s.368E(2) of the Act:

### **Rule 11: Harmful Material: Prohibited material**

2.39 An ODPS must not contain any prohibited material.

2.40 "Prohibited material" means:...

- (c) material whose nature is such that it is reasonable to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would determine for those purposes that the video work was not suitable for a classification certificate to be issued in respect of it.

2.41 In determining whether any material falls within (c), regard must be had to any guidelines issued by the video works authority (the British Board of Film Classification) as to its policy in relation to the issue of classification certificates.

According to the British Board of Film Classification<sup>2</sup>:

"In some cases, we require assurances, cuts or other changes (for example, the addition of warning captions) as a condition of classification, or as a condition of classifying at a particular category. In some circumstances we may refuse to classify a work at any category....If a submitted work raises issues or concerns that cannot be addressed by classification at a particular age category, we may require cuts or other changes as a condition of classification. Such intervention is most likely when the submitted work contains:...portrayals of children in a sexualised or abusive context".

We also sought advice directly from the BBFC who subsequently contacted the Service Provider about the content.

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<sup>2</sup> <https://www.bbfc.co.uk/about-classification/classification-guidelines>

In accordance with our [Procedures for Investigating breaches of rules of on-demand programme services](#), Ofcom requested comments from the Service Provider on how the Programme complied with ODPS Rule 11.

## Response

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The Service Provider provided representations in which, among other things, it confirmed that the BBFC had written to it following contact from Ofcom. Following this correspondence from the BBFC, the Programme was immediately removed from the Service. The Service Provider further confirmed that the notification from the BBFC stated that, in its view “the sequence...contains a frame that would contravene the Protection of Children Act 1978....on the basis that it shows a child in the same frame as sexual activity”. The Service Provider noted that the Programme had not been classified by the BBFC (as a result of which it did not carry a BBFC rating) but “the BBFC recommended we remove the Title [Programme] whilst considering next steps”.

The Service Provider explained that upon receipt of the BBFC’s correspondence it withdrew the Programme from the Service and “conducted an internal investigation to understand what had happened in this instance”. It said its findings concluded that its “initial review of the Title did not contravene our internal policies and procedures, which we believed to be consistent with the Act (and the BBFC Classification Guidelines) on the basis of the standards laid out therein”. However, it noted that it now appreciated that the BBFC “not unreasonably, sets a low threshold for content that may contravene the Act”<sup>3</sup> and therefore it did not intend to include the Programme on the Service again. The Service Provider also explained it was “currently updating our policies and procedures to take the BBFC’s guidance on this Title into account”.

The Service Provider added that it considered its measures for detecting Prohibited Material (as defined in s.368E(2) of the Act) to be “robust, complete and effective”, and that this was evidenced by “over a decade of content distribution under the supervision of Ofcom without any prior formal investigations from Ofcom, such as that relating to the Title”. However, it recognised that “these sorts of content policies are nuanced and we regularly evaluate where we can make improvements”. The Service Provider also pointed out that in early 2023, it had entered into a deeper collaboration with the BBFC and “welcome[s] their valuable partnership in matters of content suitability”.

## Response to Preliminary View

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Ofcom issued a Preliminary View, finding the Programme in breach of ODPS Rule 11 (s.368(2) of the Act).

In response to the Preliminary View, Amazon reinforced its commitment to continuously work to “improve [its] content policies and internal practices and deliver the right experience to [its] customers”. It added that since providing its initial correspondence it had “updated [its] content policies and conducted post-incident trainings to achieve two main goals”. First, the Service Provider mentioned that it had updated its content policies to ensure they are “more robust and capture Prohibited Materials (as defined in the Communications Act) more effectively”. Second, it had reviewed internal processes and conducted training so that customers received “a faster response

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<sup>3</sup> Protection of Children Act 1978.

compared to the one we sent to this customer”. Amazon mentioned the complainant in this particular case and acknowledged that although it had replied to the complainant, “this did not meet [its] high internal standards for timely responses”.

The Service Provider concluded by adding it was confident that these efforts and its collaboration with the BBFC would “ensure content suitability on our Service and the right experience for our customers”.

## Decision

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In accordance with s.368C of the Act, Ofcom is required to ensure that ODPS providers comply with their statutory duties. The [ODPS Rules and Guidance](#) produced by Ofcom set out the statutory requirements with which ODPS providers must comply and non-binding guidance to assist providers in interpreting the rules.

Section 368E(2) of the Act, which is reflected in ODPS Rule 11, specifies that an ODPS must not contain Prohibited Material. Prohibited Material is defined in s.368E(3)(b) of the Act and ODPS Rule 11 as including “material whose nature is such that it is reasonable to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would determine for those purposes that the video work was not suitable for a classification certificate to be issued in respect of it.”

Section 368E(6) of the Act further provides that in determining whether any material falls within s.368E(3)(b), “regard must be had to any guidelines issued by the video works authority as to its policy in relation to the issue of classification certificates”.

As explained above, the Programme as made available on Prime Video included a sequence in which a baby was in the presence of two adults depicted as engaging in sexual activity. This included a shot of the baby and the couple at the same time. As required by the Act, we had regard to the BBFC guidelines which state that cuts or changes are likely to be required as a condition of classification where there are “portrayals of children in a sexualised or abusive context”. As noted in Amazon’s representations, the BBFC had confirmed to it that the Programme contained content which would contravene the Protection of Children Act 1978.

Taking these considerations into account and having had regard to the guidelines issued by the BBFC on classification certificates, it was Ofcom’s view that the Programme would have been considered unsuitable for a classification certificate by the BBFC. Accordingly, Ofcom determined that the Programme constituted Prohibited Material which was made available on the Service, in breach of s.368E(2) of the Act and ODPS Rule 11.

We took into account that Amazon told us that it had immediately removed the Programme from the Service upon receiving notification from the BBFC. However, Ofcom recognised that Amazon had been contacted by a complainant raising concerns about scenes of sexual activity in the presence of a baby in November 2023. Amazon did not provide any information as to how it responded to this initial complaint. In response to Ofcom’s Preliminary View, Amazon acknowledged that a reply had been sent to the complainant but that this did not meet its standards for timely responses. Consequently the Programme, which constituted Prohibited Material, had remained available on the Service until 9 January 2024 following Ofcom and the BBFC’s intervention.

Ofcom acknowledged Amazon’s assurances that it had updated its content policies to “capture Prohibited Materials (as defined in the Communications Act) more effectively” and had reviewed internal processes and conducted training. However, our Decision is that by making this content available on Prime Video, Amazon was in clear breach of ODPS Rule 11 (reflecting s.368(2) of the Act).

**Decision: Breach of ODPS Rule 11 (s368(2) of the Act)**