



## **Video-sharing platform regulation**

### **BBC response to Ofcom's call for evidence**

September 2020

## Overview

1. The BBC welcomes AVMSD implementation and increased protections for audiences. We support the aims of the new statutory framework including in relation to video sharing platforms (VSPs) and agree that it is right that people – and in particular, children - should be protected against harmful content and harmful online behaviours. As the reach and influence of online spaces grow, online players including VSPs have become more part of the media mainstream and should expect to be accountable for their output and services. We agree that there should be independent regulatory oversight of internet platforms' actions to address the excesses of the internet. It is not reasonable to expect the public - in particular children - to navigate harms on their own, nor is it realistic to expect social media platforms to make all the judgement calls.
2. In a world of fake news and disinformation online, audiences say they turn to the BBC for a reliable take on events and this reputation for accuracy and trust sends audiences to the BBC during breaking news and to verify facts.<sup>1</sup> BBC Online reaches almost 30 million UK adults every week via a number of channels including video sharing platforms and the BBC has recently seen record usage of social media accounts: the BBC News YouTube account saw 38 million video views in the last week of March, compared with a 2019 average of 9 million per week.<sup>2</sup>
3. In the UK, the content that is commissioned and distributed by PSBs ('PSB Content') accords to very high standards including editorial codes based on – and which can go beyond - the Ofcom Broadcasting Code. The content regulation landscape in the UK is complex and includes existing PSB regulation and a government commitment to bring forward legislation on online harms that will likely cover most video sharing platforms.
4. One key aspect of ensuring that the demands of AVMSD are reconciled with existing regulation is to recognise that PSB Content meets higher standards than AVMSD standards.

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<sup>1</sup> Ofcom Review of BBC News and Current Affairs, 24 October 2019  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0025/173734/bbc-news-review.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0025/173734/bbc-news-review.pdf)

<sup>2</sup> <http://downloads.bbc.co.uk/aboutthebbc/reports/annualplan/annual-plan-2020-21.pdf>

5. Ofcom should issue guidance that sets appropriate, clear standards for ensuring that VSPs give appropriate protection to PSB Content, along with a duty for Ofcom to provide guidance on how it will enforce the requirements and what it will consider to be appropriate measures. In particular (and to summarise some key points we make below):
- As per Article 28b(3), the appropriate measures contained in Ofcom's Guidance will take into account the nature of the content in question including (1) where content is already subject to content regulation, including regulation by Ofcom... and (2) where content has been made with a view to fulfilling government-defined public service purposes.
  - Ofcom Guidance should make clear that VSPs should operate a presumption that PSB Content does not contravene the standards provided within AVMSD - their systems should therefore be able to recognise PSB Content and create a special process for PSB Content to guard against over-removal, overzealous filtering or other censorious practices if VSPs deem them to be 'appropriate measures' to meet the requirements of AVMSD Art 28. Where appropriate, VSPs should provide notifications to PSBs in advance of removal of PSB Content and an explanation.
  - We do not believe that VSPs currently have sophisticated systems that recognise PSBs as distinct from other media providers or users that are not regulated to PSB standards. We would be interested to explore whether platforms have the technical means to create 'whitelists' that allow a quick and clear way to identify them including as part of automated processes.
  - One case where this has been an issue previously is where PSBs have wished to report misinformation and disinformation that used PSB branding or logos but have has no special status in reporting such cases and have been forced to use copyright procedures. It is very important that audiences can trust content that bears PSB and trusted news branding and logos. Therefore it is crucial that the process for PSBs to report brands being misused is effective. This may well mean a separate process for PSBs/trusted news providers to report.
  - The BBC has many social media accounts, and when it comes to checking these comments, we mainly rely on the platform's own moderation service. But we may remove comments ourselves if they are rude, illegal, harmful, promoting or selling something. We would welcome better facilitation by social media platforms to allow us to easily monitor comments. Different platforms offer different capabilities for third parties to understand what

users are saying in their comments and contributions. For example, some platforms allow us a flagging functionality, to flag words that – if used by a commenter – would automatically alert us of a probable breach of our standards. However this list of words is likely to be limited to a small number of words – and would be much more helpful to us if it was much longer or unlimited.

- We also set out a number of suggestions on how VSPs can provide for an out of court redress mechanism.

## Section 1: Introduction

6. The BBC welcomes AVMSD implementation and increased protections for audiences. We support the aims of the new statutory framework including in relation to video sharing platforms (VSPs) and agree that it is right that people – and in particular, children - should be protected against harmful content and harmful online behaviours.
7. As the reach and influence of online spaces grow, online players including VSPs have become more part of the media mainstream and should expect to be accountable for their output and services. We agree that there should be independent regulatory oversight of internet platforms' actions to address the excesses of the internet. It is not reasonable to expect the public - in particular children - to navigate harms on their own, nor is it realistic to expect social media platforms to make all the judgement calls.
8. In a world of fake news and disinformation online, audiences said they turn to the BBC for a reliable take on events and this reputation for accuracy and trust sends audiences to the BBC during breaking news and to verify facts.<sup>3</sup>
9. BBC Online reaches almost 30 million UK adults every week via a number of channels including video sharing platforms. The crucial role of the BBC as an online news provider has been demonstrated in the Covid 19 crisis. The BBC has

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<sup>3</sup> Ofcom Review of BBC News and Current Affairs, 24 October 2019  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0025/173734/bbc-news-review.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0025/173734/bbc-news-review.pdf)

continued to deliver news through our main social media accounts as a way of engaging audiences with trusted information about the pandemic. We have seen record usage of social media accounts: the BBC News YouTube account saw 38 million video views in the last week of March, compared with a 2019 average of 9 million per week. The BBC News UK Twitter account saw record numbers of engagements, with 5.6 million in the first week of April, compared with a 2019 average of 1.2 million per week.<sup>4</sup>

10. One of BBC's unique strengths is the ability to bring both worlds together: live and on-demand, broadcast and internet-delivered, and across video, audio and text. During the Covid-19 crisis, we have shown the value of both, with usage of TV news and online news both up sharply, and with overall TV viewing and iPlayer usage also up. The BBC accounts for roughly 24% of all UK video, audio and online time spent by the average adult in a week – including YouTube, social media, general browsing, shopping and search.<sup>5</sup>
11. The BBC is also a UK-leader in providing advice and guidance to children and their parents on how to navigate online.<sup>6</sup> This includes the *Own It3* website (developed from the Stay Safe initiative) which collates BBC and third-party resources for 9-12 year olds to help them stay safe and enjoy their time online.
12. The content regulation landscape in the UK is complex and includes existing PSB regulation and a government commitment to bring forward legislation on online harms that will likely cover most video sharing platforms. Implementation of AVMSD should reconcile the demands of AVMSD and existing PSB regulation in a way that is clear to platforms, consumers and PSBs.
13. In the UK, the content that is commissioned and distributed by PSBs ('PSB Content') accords to very high standards including editorial codes based on – and which can go beyond – the Ofcom Broadcasting Code. One key aspect of ensuring that AVMSD fits properly with existing regulation is to recognise that PSB Content meets higher standards than AVMSD standards – regulated by Ofcom and made according to high editorial values. The BBC Editorial Guidelines are the standards

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<sup>4</sup> <http://downloads.bbc.co.uk/aboutthebbc/reports/annualplan/annual-plan-2020-21.pdf>

<sup>5</sup> <http://downloads.bbc.co.uk/aboutthebbc/reports/annualplan/annual-plan-2020-21.pdf>

<sup>6</sup> BBC iPlayer has protection systems such as G for Guidance which provides a parental lock and offers programme information on suitability.

that underpin all our journalism, at all times. They apply to all our content, wherever and however it is received. Producing and upholding these Editorial Guidelines is an obligation across the BBC and all output made in accordance with these Editorial Guidelines fulfils our public purposes – meeting and going beyond the requirements of our regulator, Ofcom. We are also held to account directly by our audiences for all our content including on third party platforms through our complaints framework.

14. Therefore video sharing platforms can be confident that if content is BBC or PSB Content, there is negligible risk that they should be required to filter it, demote it, or take it down (or any other process that they consider to be an 'appropriate measure' for AVMSD Art 28 reasons). If such a rare occasion were to arise, then it would be adequately dealt with under our proposals below.

## **Section 2: Consultation questions**

### **Question 19: What examples are there of effective use and implementation of any of the measures listed in article 28(b)(3) the AVMSD 2018?**

15. By way of background, the BBC has systems for its own platforms, where appropriate. To be clear, these are not video sharing platforms that would meet the AVMSD definition of a VSP. For example, comments on the bbc.co.uk website are often checked to make sure they adhere to the BBC's rules for commenting and uploading. If a person does not agree with a moderation decision they can make an appeal. Most comments or uploads are "reactively-moderated" if they are reported by someone else or if a moderation filter alerts moderators. We'll always check a users' first comment before it appears. If, at any time, someone keeps breaking the rules for commenting or uploading, they might have their account "set" to pre-moderation. In these cases, a moderator checks every comment before it appears.
16. However, the prevention and moderation of harmful content is not just a matter for the BBC on its own sites but in relation to BBC content that is posted on third party platforms. The BBC has editorial responsibility for all BBC branded channels on social media regardless of the reporting functions or moderation services of the individual platforms. This means that comments below our content are affected by the various prevention and moderation procedures on those third party platforms – and that may include platform's approach to enforcing their terms and conditions, flagging and moderation of comments,

complaints functions and other measures. The BBC has many social media accounts, including those on Twitter, Facebook, Instagram and YouTube, and we invite everyone to share their opinions and comments on our posts. When it comes to checking these comments, we mainly rely on the platform's own moderation service. But we may remove comments ourselves if they are rude, illegal, harmful, promoting or selling something. BBC spaces on social media should reflect the same values and audience expectations as their on-platform brands.

17. Our duty of care, particularly towards children and vulnerable contributors on social media requires careful consideration. This is set out in more detail in our editorial guidance on third-party websites.<sup>7</sup> As we set out below, we would welcome better facilitation by social media platforms to allow us to easily monitor comments.

**Question 20: What examples are there of measures which have fallen short of expectations regarding users' protection and why?**

18. Examples of takedown of BBC content are set out in Annex 1 and fell short of expectations because they prevented audiences from receiving important news and information. Please note that while many of these do not relate to video content they are from platforms that have a comparable structure, liability and moderation approach to the major VSPs.

**Question 21: What indicators of potential harm should Ofcom be aware of as part of its ongoing monitoring and compliance activities on VSP services?**

19. Ofcom should monitor the removal, filtering or other censorious practices in relation to PSB Content, and especially news content, given its important role in citizen's democratic lives.

**Question 23: What challenges might VSP providers face in the practical and proportionate adoption of measures that Ofcom should be aware of?**

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<sup>7</sup> <https://www.bbc.com/editorialguidelines/guidance/social-media>

20. We do not believe that VSPs currently have sophisticated systems that recognise PSBs as distinct from other media providers or users that are not regulated to PSB standards. We would be interested to explore whether platforms have the technical means to create 'whitelists' that allow a quick and clear way to identify them.
21. The BBC has many social media accounts, and when it comes to checking these comments, we mainly rely on the platform's own moderation service. But we may remove comments ourselves if they are rude, illegal, harmful, promoting or selling something. We would welcome better facilitation by social media platforms to allow us to easily monitor comments. Different platforms offer different capabilities for third parties to understand what users are saying in their comments and contributions. For example, some platforms allow us a flagging functionality, to flag words that – if used by a commenter – would automatically alert us of a probable breach of our standards. However this list of words is likely to be limited to a small number of words – and would be much more helpful to us if it was much longer or unlimited.
22. It is very important that audiences can trust that content that bears PSB and trusted news branding and logos. Therefore it is crucial that the process for PSBs to report brands being misused is effective. This may well mean a separate process for PSBs/trusted news providers to report.
23. For many platforms, it is possible for any person to report individual posts as false/suspicious/harmful but the process is even less effective than the process for reporting IP infringements. In particular, the reports do not give the BBC, as the complainant, an opportunity to set its complaint out in full, or to be confident of an urgent response as required. For this reason the BBC generally relies on copyright and/or trade mark rights when filing complaints with platforms about fake news and disinformation, e.g. impersonation accounts that use BBC branding or fabricated videos using BBC footage.
24. By way of example, earlier this year a social media account impersonating BBC Breaking News tweeted that the Prime Minister had died whilst in hospital with Covid-19, and was retweeted hundreds of times before being deleted.<sup>8</sup> In another example, a fabricated image of a supposed BBC News story in late June about the health of another public figure made it appear as if the BBC had accidentally published a story ahead of time and quickly removed it. This this led to a narrative

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<sup>8</sup> <https://fullfact.org/health/boris-johnson-coronavirus-death/>



'pile on' on online platforms that the BBC was involved in a conspiracy and cover up. However we had no special status or standing to raise this with platforms, or the opportunity to set out our legitimate concerns in full, unless we did so on the basis of trade mark and/or copyright infringement. In addition, being forced to frame the complaint as a (predominantly) IP issue, means that consumers are not properly informed that the original content was false. Instead the platform may simply indicate that it has been removed in response to a report from the rightsholder.

**Question 24: How should VSPs balance their users' rights to freedom of expression, and what metrics should they use to monitor this? What role do you see for a regulator?**

25. We are pleased that the Directive recognises the significant risk to freedom of expression that lies in requiring platforms to regulate content - including (but not limited to) mandating redress and dispute mechanisms to mitigate some of the potential negative effects of the legislation. Although 'freedom of expression' is a qualified right, we believe that Ofcom should set out appropriate measures for protecting freedom of expression given in particular that the Directive states that "the appropriate measures shall be determined in light of [...] the rights and legitimate interests at stake, including those of the video-sharing platform providers and the users having created or uploaded the content as well as the general public interest."<sup>9</sup> The rights to which Article 28b(3) refers clearly include the right to freedom of expression.
26. More specifically, as per Article 28b(3), the appropriate measures contained in Ofcom's Guidance will take into account the nature of the content in question and the BBC's rights and legitimate interests, including (1) where content is already subject to content regulation, including regulation by Ofcom and in any event the need to meet strict editorial standards and (2) where content has been made with a view to fulfilling government-defined public service purposes.
27. Ofcom Guidance should make clear that VSPs should operate a presumption that PSB materials do not contravene the standards provided within AVMSD - their systems should therefore be able to recognise PSB Content and create a special process for PSB Content to guard against over-removal, overzealous filtering or

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<sup>9</sup> Article 28b(3) of the Directive.

other censorious practices if VSPs deem them to be 'appropriate measures' to meet the requirements of AVMSD Art 28. Where appropriate, VSPs should provide notifications to PSBs in advance of removal of PSB Content and an explanation.

**Question 25: How should VSPs provide for an out of court redress mechanism for the impartial settlement of disputes between users and VSP providers? (see paragraph 2.32 and article 28(b)(7) in annex 5).**

28. The EU Platform-to-Business Regulation provides a helpful template for the sorts of requirements which VSPs should be subject to when providing an out of court redress mechanism. In particular, the internal complaint-handling system should adhere to the following principles:

- it should be easily accessible and free of charge for business users. We note that the BBC complaints system is also free of charge, and this should therefore also be a reasonable requirement for VSPs to adhere to;
- complaints should be handled within a reasonable timeframe, with timeframes set out in the Ofcom Guidance and including requirements for an expedited process according to the level of risk;
- the system should be based on the principles of transparency and equal treatment applied to equivalent situations, and should treat complaints in a manner which is proportionate to their importance and complexity.<sup>10</sup>

29. We also draw Ofcom's attention to the other parts of Article 11 of the Platform-to-Business Regulation, which set out helpful principles for internal complaints handling systems which could be easily transposed for VSPs in this instance. In particular, we consider the following principles to be particularly important:

- VSPs should duly consider complaints lodged and the follow-up which they may need to give to the complaint in order to adequately address the issue raised;
- VSPs should process complaints swiftly and effectively, taking into account the importance and complexity of the issue raised;

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<sup>10</sup> Based on the Platform-to-Business Regulation, Article 11(1).

- VSPs should communicate the outcome of the process to the complainant in an individualised manner and drafted in plain and intelligible language.<sup>11</sup>

30. We also consider that the mediation provisions of the Platform-to-Business Regulation offer a useful guide for how the second stage of the out of court redress mechanism can be devised. VSPs should be under a requirement to identify two or more mediators with which they are willing to engage in order to reach an agreement with complainants out of court and where the complaints process has failed to resolve a complaint. Mediators should meet the following requirements:

- they should be located within the UK and capable of mediating in English;
- they should be impartial and independent;
- their mediation services should be affordable for complainants and easily accessible in person or by remote communication technology;
- they should be capable of providing their mediation services without undue delay and they should be appropriately qualified to be able to contribute effectively to the settlement of disputes involving VSPs.<sup>12</sup>

31. VSPs and complaints should be required to engage in any mediation process in good faith. VSPs should bear a reasonable proportion of the costs, to be determined by the mediator, taking into account all relevant elements of the case in hand, including the merits of the claims on both sides, the conduct of the parties and the relative size and financial strength of the parties.<sup>13</sup>

**Question 28: Do you have any views on the set of principles set out in paragraph 2.49 (protection and assurance, freedom of expression, adaptability over time, transparency, robust enforcement, independence and proportionality), and balancing the tensions that may sometimes occur between them?**

32. All of the principles are important, including in particular the need to protect consumers and minors from harm.

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<sup>11</sup> Based on the Platform-to-Business Regulation, Article 11(2).

<sup>12</sup> See the Platform-to-Business Regulation, Article 11(2).

<sup>13</sup> See the Platform-to-Business Regulation, Article 11(4).

33. We do not believe that introducing measures that protect freedom of expression – as set out above – will inhibit the protection and assurance of citizens, including children. PSB Content is valuable to the public, accords to the highest standards, is clearly not harmful – VSPs are an important route to reach all UK citizens, including young audiences, and for example to challenge disinformation where it circulates through the provision of accurate news and fact checking.
34. We also note that all measures should be practicable and proportionate, under Art 28b. The “appropriate measures” to be put in place are to be determined, amongst other matters, “in light of the nature of the content in question and the harm it may cause”, as well as “the rights and legitimate interests at stake [...] including those of [...] the users having created or uploaded the content as well as the general public interest.”
35. In addition, we might also differentiate between principles which express a policy aim (e.g. protection and assurance, safeguarding freedom of expression and adaptability over time), as against principles which are more focused on ensuring fair and effective enforcement of VSP regulation (e.g. transparency, robust enforcement, independence and proportionality). Where there are tensions between these principles, the principles which express a policy aim should be applied first before the remaining principles are applied to ensure fair and effective enforcement of VSP regulation.