

Response to the Ofcom Consultation on Video Sharing Platforms from Carr, Mr J OBE, by email only. 23<sup>rd</sup> September 2020

1. The kind of measures described in para 2.26 of the consultation document are most welcome and will benefit all kinds of consumers of video content, including children. Moreover, to the extent that the intention to adopt the AVMSD provides further evidence of the Government's determination to require online businesses to restrict children's access to age inappropriate content, the proposal as a whole is also to be applauded.
2. Yet, as Para 2.6 makes clear, the AVMSD's jurisdictional limitations mean, in practice, in relation to children's rights and child protection in the online environment, on their own and without more these proposals are likely to be of limited relevance or significance in the UK. You Tube, Facebook and Twitter, for example, will be under the primary jurisdiction and supervision of the Irish media regulator, not Ofcom. Many Apps and platforms popular with children similarly have their legal domicile outside of the UK.
3. Para 2.9 indicates the definition of whether or not a VSP is "*established*" in the UK may change but the remainder of this note is written on the assumption that if there is to be a change the new definition will not depart radically from previous norms.

#### **Only six platforms**

4. Paras 2.6 and 2.19 identify only six large platforms which currently are, or are likely to be, within Ofcom's purview after the AVMSD comes into effect. It will be interesting to see if that remains the case. Some might move. New ones may choose to settle elsewhere.
5. Modern technology allows online businesses to establish themselves or switch the legal base of their operations rapidly and inexpensively.

#### **Only two adult sites**

6. Ofcom's consultants identified (Para 2.19) only two so-called adult sites (in this case meaning pornography sites) which would be caught under the terms of the AVMSD as it applies in the UK. It is a while since UK-based pornography sites have been a significant problem. Thus, at least insofar as it concerns protection against pornographic content, the AVMSD is again unlikely to be of much interest or relevance to UK children. If the UK continues to engage with ERGA processes that may change in respect of pornography sites domiciled in EU Member States, but if history is any guide that is uncertain and may take a long time to evolve. However, most of the important pornography sites do not have their headquarters in any of the EU jurisdictions. So we are pretty much back where we started.

#### **Limitations of the country of origin principle**

7. These references to jurisdictions are necessary because of the primacy accorded to the AVMSD's "*country of origin*" principle. A rule of that kind makes it easier for audio visual businesses to address a larger customer base, thereby helping reduce operational costs and boost profitability.

8. This may help European producers compete with non-EU producers but it does not necessarily always chime with the best interests of children who live in particular cultural contexts determined by a great many factors, many of which owe much to their local, i.e. national, history and traditions.

### **The importance of the Online Harms legislation**

9. Acknowledging the limitations of the AVMSD, the consultation document repeatedly notes the up-coming Online Harms legislation is likely to be the principal vehicle to address age inappropriate content within a framework of a duty of care. Responding to question 22 of the questionnaire, pornography has received a great deal of attention, and will continue to do so, but there are several other types of violent and harmful materials which are the source of equal or greater concern.
10. Building on Part 3 of the Digital Economy Act 2017 the Online Harms legislation will not feel bound to honour the country of origin principle. Quite right too.
11. Nevertheless, it should be noted the Government's interim response to the consultation on the Online Harms Green Paper spoke largely about platforms which permit the publication of user generated content. By contrast, the AVMSD is not limited in that way.
12. From a child protection and child rights perspective, it makes no sense to limit the scope of one's resolve to protect children only to platforms which allow user generated content to be published. What matters is the nature of the content and its impact on children, not how, by whom or where it was produced or from where it happens to be published.
13. The final outcome of these different processes should therefore, inter alia, synthesise the White Paper's ambition to disregard the country of origin principle, with the AVMSD's ambition regarding the nature of the content.

### **Operating in consumer and family markets**

14. Whatever else it might *also* be, today the internet and its associated technologies are consumer products, operating in consumer and family markets. Children and families are a major and persistent presence and body of users. Providers of online services and associated technologies need to accept and become accustomed to operating according to consumer and family-oriented standards.
15. Likewise, referring to Question 24 of the Ofcom questionnaire, when it comes to the matter of internet regulation, children's rights should not forever be sacrificed, overlooked or marginalized in favour of other interests.