

Channel 4's response to the Ofcom Video-Sharing Platform Regulation Call for Evidence

Executive Summary

- Channel 4 welcomes the opportunity to respond to Ofcom's call for evidence on the Video Sharing Platform Regulation.
- Channel 4's response focuses on advertising provisions relating to VSPs and the safeguarding of freedom of expression.
- Channel 4 supports the extension of the scope of the revised AVMS Directive to VSPs as we believe this reflects their growing reach and influence.
- Channel 4 recognises the new VSP rules will for the first time mean that UK online services which provide access to user generated videos will fall within the scope of the regulatory framework.
- TV and VOD advertising in the UK operate under a system of strict regulation - in terms of the advertising sold, the content aired, and the way business is carried out with our partners, with effective sanctions in place if those rules are broken. The broadcasting advertising regime also puts clear liability for ensuring the adverts comply with the rules on the broadcaster.
- Channel 4 welcomes the VSP advertising provisions in the revised AVMS Directive. These obligations relating to advertising are similar to those faced by linear and VOD providers. Our understanding is that with the implementation of the Directive, VSPs will be for the first time be legally responsible for advertising for services which are solely under their control.
- Channel 4 believes the requirement to have "appropriate measures" in place for advertising VSPs do not control, does not mean that video sharing platforms should not be subject to robust enforcement regarding advertising related harms.
- Channel 4 would welcome Ofcom's decision, were it to decide, to designate the Advertising Standards Authority (ASA) as co-regulator in respect of VSP advertising.
- Channel 4 strongly welcomes Ofcom's statement in the call of evidence that its guidance will make clear that VSPs must take into account the freedom of expression of their users. Ofcom's guidance should require VSPs systems to be able to recognise PSB content so that it is not taken down following a complaint from a user.

Channel 4

Channel 4 is a publicly-owned, commercially-funded public service broadcaster with a statutory remit to be innovative, experimental and distinctive. Channel 4's not-for-profit status ensures that the maximum amount of its revenues is reinvested in the delivery of its public service remit.

In response to changing viewer demand, Channel 4 broadened its portfolio to offer a range of digital services. In addition to the main Channel 4 service, the Channel 4 portfolio includes E4, More4, Film4, 4Music and 4Seven, as well as time-shift and HD services, including Channel 4 HD.

Channel 4's new digital content studio, 4Studio, is at the heart of the broadcasters' digital acceleration strategy, leading on all aspects of short-form content publication across social media platforms and delivering on Channel 4's strategy to serve young audiences in the spaces where they like to consume and interact with content.

An example of Channel 4's digital acceleration strategy includes a pioneering partnership announced in July 2020 with the VSP Snap Inc, which will see upwards of 300 short form edits of Channel 4 content air on Snapchat's Discover platform over the next year. This partnership allows us to further our mission to serve young audiences, to increase time spent with Channel 4 and to supercharge our social footprint.

Advertising – Effective Online Regulation

Channel 4 believes increasing trust in digital advertising and a competitive advertising market are critical in ensuring the ongoing success of Channel 4 as an almost entirely advertising-funded, free-to-air Public Service Broadcaster. Advertising is overwhelmingly Channel 4's primary source of revenue and how we fund investment in original content in order to fulfil our public service remit.

As the CMA outlined in its recent report on Online Platforms and Digital Advertising, Google has more than a 90% share of the £7.3 billion search advertising market in UK, while Facebook (including Instagram) has over 50% of the £5.5 billion display advertising market.

While these figures demonstrate the clear dominance of Google and Facebook in their respective markets, it is also important to acknowledge the wider impact of this dominance on other sectors which rely on advertising revenues for funding. This includes commercially funded public service broadcasting. It is thus critical for Channel 4 that the online advertising market operates fairly, in a transparent manner and with effective regulation.

Regulation of Broadcast Advertising

Channel 4 operates under a system of strict regulation, in terms of the advertising we sell, the content we air and the way we do business with our partners, with effective sanctions in place if those rules are broken.

The TV regime also puts clear liability for ensuring the adverts comply with the rules on the broadcaster and with every advert we show receiving pre-clearance via Clearcast, a clearance body funded by broadcasters to ensure that all advertising complies with UK advertising rules and regulations as laid out in the BCAP code, before it is allowed to be transmitted.

This is not currently the case with online advertising, where the responsibility for compliance sits with the advertiser, not the platform despite the platform being the publisher of the advertising from which it profits.

Trust in Digital Advertising

Public concerns in relation to trust in digital advertising have been highlighted by a 2019 study commissioned by the advertising industry's umbrella body, the Advertising Association (AA), and carried out by the thinktank Credos. According to the Credos study, public trust in advertising had hit an all-time low, public favourability towards advertising being just 25% in December 2018. In 1992, the public favourability figure towards advertising was 48%.

Credos conclusions showed that while people appreciate benefits advertising brings, there are a range of issues negatively impacting their perceptions, particularly relating to online advertising. These include bombardment and intrusiveness, as well as concerns around sensitive sectors and vulnerable groups.

The AA highlighted that the decline in trust in advertising was a material concern because *"Advertising plays an important part in funding all the media. A vibrant and pluralistic media environment is the bedrock of our democracy and provides people with a huge array of content and services. Yet public trust and favourability towards the advertising industry has been in long-term decline since the early 1990s. That decline could ultimately undermine the creativity, jobs, and value advertising brings to society"*.

Channel 4 believes the ASA as the UK's independent regulator of advertising across all media have made some progress in regulation of online advertising under the current self-regulatory rules but the need for specific VSP advertising rules as adopted in the revised AVMSD became increasingly necessary due to consumer expectations to tackle advertising related harm.

This has been acknowledged by the Advertising Association, when it stated the ASA system is *"under strain, with around half its workload now focused on regulating companies' own advertising claims on their own websites and social media "* - and indeed even with ensuring adverts for age restricted categories such as Gambling, Alcohol, HFSS and E-Cigarette/Tobacco products are not able to appear in age restricted children's website and YouTube channels. According to the ASA, there

have been 159 instances of such advertising breaches in just three months as reported in its “Tech4Good” (Q2/2020) enforcement strategy report.

Channel 4 believes that rigorous compliance with the VSP advertising rules in the AVMS Directive is an opportunity for video sharing platforms to increase trust in digital advertising, which would not only benefit the whole of the advertising industry but also be welcomed by the wider society.

AVMSD – VSP Provisions

Channel 4 recognises the new VSP rules will for the first time mean that UK online services which provide access to user generated videos will fall within the scope of the regulatory framework.

Channel 4 supports the extension of the scope of the revised AVMS Directive to VSPs as we believe this reflects their growing reach and influence. As Ofcom states in the call of evidence, *“VSPs allow users to engage with a wide range of content and social features and are particularly popular among young people, 90% of adults and 98% of children aged 8-15 who use the internet have used a VSP in the past year”*.

The AVMSD implicitly recognises that younger viewers may not make a distinction between linear TV, VOD and online user generated videos, hence the reason why the Directive has extended protection of minors’ rules to VSPs.

VSP platforms are also significant players in the UK digital advertising market who compete with broadcasters for digital advertising spend. There is also increasing consumer expectation that online advertising should be regulated to the same extent as broadcasting.

VSP Advertising Provisions

Channel 4 welcomes the VSP advertising provisions in the revised AVMS Directive which include:

- Transparency of advertising – that VSP providers clearly inform users where videos contain audiovisual commercial communications.
- HFSS restrictions – encouragement of the use of co-regulation and self-regulation to effectively reduce the exposure of children to audiovisual commercial communications for HFSS foods.
- AVMSD rules make a distinction between audiovisual commercial communications that are under the control of the VSP; and audiovisual commercial communications which is not sold, marketed or arranged by a VSP.

Channel 4 welcomes Ofcom’s statement that it envisages a regulatory regime that takes account of these different categories of advertising, whilst minimising complexity.

Advertising Under Control of the VSP

Article 28 b.2 sub para 1 of the revised AVMSD, obliges Member States to ensure video sharing platforms comply with Article 9(1) with respect to audiovisual commercial communications that are under their control.

These obligations relating to advertising are similar to those faced by linear and VOD providers. Our understanding is that with the implementation of the Directive, VSPs will be for the first time be legally responsible for advertising for services which are solely under their control.

Channel 4 believes VSPs will therefore have the responsibility for complying with both the content and scheduling of adverts.

Ofcom needs to make clear in its dialogue with the VSPs and in the VSP framework guidelines to be produced, that the VSPs are expected to invest in the necessary systems, tools and technologies that enable them to meet requirements of the AVMSD – and to make clear that a range of sanctions similar to those applicable to broadcasters would be the penalty for non-compliance.

Channel 4 welcomes this long overdue provision as we believe this meets audience expectations.

Advertising not Marketed, Sold or Arranged by VSPs

Article 28b 2 sub para 2 of the AVMSD, ensures VSP providers take **appropriate measures** to comply with the Directive’s advertising rules in Article 9(1) in relation to audiovisual commercial communications that are not under their control – i.e. those which are not marketed, sold or arranged by the VSPs.

The revised Directive makes clear *“the appropriate measures shall be determined in light of the nature of the content in question, the harm it may cause, the characteristics of the category of persons to be protected as well as 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”*.

Channel 4 believes the reference to “appropriate measures” require the VSP provider to take a more active role or to devote additional resources to comply with the Directive. In practice, this will mean the VSP will have to align its terms and conditions and actively enforce them in relation to audiovisual commercial communications.

This is important in terms of enhancing consumer protection - as the 2019 Advertising Standards Association (ASA) annual report reported complaints against influencer posts made up a quarter of all complaints received by the ASA.

We recognise the added complexity for VSPs in ensuring that third party advertising on their platforms need to adhere to the Directive’s advertising rules in 9(1).

However, Channel 4 believes the requirement to have “appropriate measures” in place for advertising VSPs do not control, does not mean that video sharing platforms should not be subject to robust enforcement regarding advertising related harms.

Channel 4 believes this view is also shared by the revised AVMSD – in Article 28b (3) when referring to the implementation of “appropriate measures” - that Member States shall ensure that all video-sharing platform providers under their jurisdiction apply such measures.

Furthermore, in Article 28b (3) (b) the text reinforces this by referring to – *“including and applying in the terms and conditions of the video-sharing platform services the requirements set out in Article 9(1) for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform providers”*;

Channel 4 believes the reference to “applying” in the above Article suggests VSPs should be enforcing robustly the contents of their Terms & Conditions on commercial communications not directly marketed, arranged or sold by the VSP.

We also believe VSPs have the power to condition the market where they can ensure best practices are embraced such as pre-clearing ads, as well as the financial resources needed to fund such an initiative. Channel 4 believes this can only increase trust in digital advertising.

ASA – Co-regulator for Advertising

Channel 4 would welcome Ofcom’s decision, were it to decide, to designate the Advertising Standards Authority (ASA) as co-regulator in respect of VSP advertising. We believe the ASA has the requisite experience and understanding of AVMSD provisions acquired through its regulation of broadcasting and on demand advertising.

However, any decision to appoint the ASA as co-regulator should also lead to accompanying funding from the VSPs for its new responsibilities as the organisation is currently stretched due to the significant increase in its workload in dealing with online advertising complaints.

Enforcement

Channel 4 believes effective enforcement of the VSP advertising rules will be important in ensuring the objectives of the Directive are met. We welcome government’s intention to replicate the sanctions regime in place for On Demand Programme Service providers and to give Ofcom a range of formal enforcement powers.

VSPs - Freedom of Expression

Channel 4 strongly welcomes Ofcom’s statement in the call of evidence that its guidance will make clear that VSPs must take into account the freedom of expression

of their users in accordance with the AVMSD and under Article 10 of the European Convention of Human Rights when designing and implementing their systems to protect users from the specified areas of harm.

Channel 4 believes that Ofcom's guidance should require VSPs systems to be able to recognise PSB content so that it is not taken down following a complaint from a user.

Channel 4 would like VSPs to avoid taking a precautionary or censorious approach to complaints relating to PSB content. As Channel 4 is aware of incidents in an EU Member State where VSPs have taken down PSB content following complaints from users even when the content concerned had been editorially compliant.

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