

Your response

Questions for industry	Your response
<p>Question 1: Are you providing a UK-established service that is likely to meet the AVMSD definition of a VSP?</p> <p>Please provide details of the service where relevant. The establishment criteria under the AVMSD are set out in annex 5.</p>	
<p>Question 2: Is your service able to identify users based in specific countries and do you provide customised User Interfaces (UI), User Experience (UX) functionality or interaction based on perceived age and location of users?</p>	
<p>Question 3: How does your service develop and enforce policies for what is and is not acceptable on your service? (including through Ts&Cs, community standards, and acceptable use policies)</p> <p>In particular, please provide information explaining:</p> <ul style="list-style-type: none">• what these policies are and whether they cover the categories of harm listed in the AVMSD (protection of minors, incitement to hatred and violence, and content constituting a criminal offence – specifically Child Sexual Exploitation and Abuse, terrorist material, racism and xenophobia);• how your service assesses the risk of harm to its users;• how users of the service are made aware of Ts&Cs and acceptable use policies; and• how you test user awareness and engagement with Ts&Cs.	
<p>Question 4: How are your Ts&Cs (or community standards/ acceptable use policies) implemented?</p> <p>In particular, please provide information explaining:</p>	

<ul style="list-style-type: none"> • what systems are in place to identify harmful content or content that may breach your standards and whether these operate on a proactive (e.g. active monitoring of content) or reactive (e.g. in response to reports or flags) basis; • the role of human and automated processes and content moderation systems; and • how you assess the effectiveness and impact of these mechanisms/ processes. 	
<p>Question 5: Does your service have advertising rules?</p> <p>In particular, please provide information about any advertising rules your platform has, whether they cover the areas in the AVMS Directive, and how these are enforced. See Annex 5 for a copy of the AVMSD provisions.</p>	
<p>Question 6: How far is advertising that appears on your service under your direct control, i.e. marketed, sold or arranged by the platform?</p> <p>Please provide details of how advertising is marketed, sold and arranged to illustrate your answer.</p>	
<p>Question 7: What mechanisms do you have in place to establish whether videos uploaded by users contain advertising, and how are these mechanisms designed, enforced, and assessed for effectiveness?</p>	
<p>Question 8: Does your service have any reporting or flagging mechanisms in place (human or automated)?</p> <p>In particular, please provide information explaining:</p> <ul style="list-style-type: none"> • what the mechanisms entail and how they are designed; 	

<ul style="list-style-type: none"> • how users are made aware of reporting and flagging mechanisms; • how you test user awareness and engagement with these mechanisms; • how these mechanisms lead to further action, and what are the set of actions taken based on the reported harm; • how services check that any action taken is proportionate and takes into account Article 10 of the European Convention of Human Rights (freedom of expression); • how users (and content creators) are informed as to whether any action has been taken as a result of material they or others have reported or flagged; • whether there is any mechanism for users (including uploaders) to dispute the outcome of any decision regarding content that has been reported or flagged; and • any relevant statistics in relation to internal or external KPIs or targets for response. 	
<p>Question 9: Does your service allow users to rate different types of content on your platform?</p> <p>Please provide details of any rating system and what happens as a result of viewer ratings.</p>	
<p>Question 10: Does your service use any age assurance or age verification tools or related technologies to verify the age of users?</p> <p>In particular, please provide information explaining:</p> <ul style="list-style-type: none"> • how your age assurance policies have been developed and what age group(s) they are intended to protect; • how these are implemented and enforced; • how these are assessed for effectiveness or impact; and • if the service is tailored to meet age-appropriate needs (for example, by restricting specific content to specific users), how this works. 	

Question 11: Does your service have any parental control mechanisms in place?

In particular, please provide information explaining:

- **how these tools have been developed;**
- **what restrictions they allow;**
- **how widely they are used; and**
- **how users of the service, and parents/guardians if not users themselves, are made aware of and encouraged to use the parental control mechanisms that are available.**

Question 12: Does your service have a complaints mechanism in place? Please describe this, including how users of your service can access it and what types of complaint they can make.

In particular, please provide information explaining:

- **any time limits for dealing with complaints;**
- **how complainants are informed about the outcomes of complaints;**
- **any appeals processes, how they work, and whether they are independent from the complaints processes; and**
- **the proportion of complaints which get disputed or appealed.**

Question 13: What media literacy tools and measures are available on your service?

In particular, please provide any relevant information about:

- **how you raise awareness of media literacy tools and measures on your service;**
- **how you assess the effectiveness of any media literacy tools and measures provided on your service; and**
- **how media literacy considerations, such as your users' ability to understand and respond to the content available to them feature in your thinking about how you design and deliver your services, for example**

<p>in the user interfaces, flagging content and use of nudges.</p>	
<p>Question 14: Do you publish transparency reports with information about user safety metrics?</p> <p>Please provide any specific evidence and examples of reports, information around the categorisation and measurements used for internal and external reporting purposes, and whether you have measures in place to report at country/ regional level and track performance over time.</p>	
<p>Question 15: What processes and procedures do you have in place to measure the impact and effectiveness of safety tools or protection measures?</p> <p>If not already captured elsewhere in your response, please provide information relevant to all of the measures listed above explaining:</p> <ul style="list-style-type: none"> • how you test and review user awareness and engagement with each measure (including any analysis or research that you would be willing to share with Ofcom); • how often policies and protection measures are reviewed, and what triggers a review; and • how you test the impact of policies on users and the business more generally, such as how you balance the costs and benefits of new tools. 	
<p>Question 16: How do you assess and mitigate the risk of inadvertent removal of legal or non-harmful content?</p> <p>In particular, please provide any information on:</p> <ul style="list-style-type: none"> • how freedom of expression is taken into account during this assessment; • how appeals are handled and what proportion are successful; and • audits of automated removal systems and, if you have them, any metrics that relate to their effectiveness. 	

Question 17: Have you previously implemented any measures which have fallen short of expectations and what was your response to this?

Please provide evidence to support your answer wherever possible.

Question 18: How does your service develop expertise and train staff around different types of harm? (e.g. do you have any partnerships in place?)

Questions for all stakeholders

Your response

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?

The measures are terms and conditions, flagging and reporting mechanisms, age verification systems, rating systems, parental control systems, easy-to-access complaints functions, and the provision of media literacy measures and tools. Please provide evidence and specific examples to support your answer.

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

Please provide evidence to support your answer wherever possible.

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

Please provide evidence to support your answer wherever possible.

Question 22: The AVMSD 2018 requires VSPs to take appropriate measures to protect minors from content which 'may impair their physical, mental or moral development'. Which types of content do you consider

<p>relevant under this? Which measures do you consider most appropriate to protect minors?</p> <p>Please provide evidence to support your answer wherever possible, including any age-related considerations.</p>	
<p>Question 23: What challenges might VSP providers face in the practical and proportionate adoption of measures that Ofcom should be aware of?</p> <p>We would be particularly interested in your reasoning of the factors relevant to the assessment of practicality and proportionality.</p>	
<p>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?</p>	
<p>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).</p> <p>Please provide evidence or analysis to support your answer wherever possible, including consideration on how this requirement could be met in an effective and proportionate way.</p>	
<p>Question 26: How might Ofcom best support VSPs to continue to innovate to keep users safe?</p>	
<p>Question 27: How can Ofcom best support businesses to comply with the new requirements?</p>	
<p>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</p>	<p>The NMA considers that the implementing legislation, the regulator's guidance and the regulator's oversight of the new regime must be carefully framed to avoid bringing online newspapers and their content, whether on newspapers' own websites or on third party platforms into scope of the revised AVMSD as</p>

balancing the tensions that may sometimes occur between them?

implemented and then retained in UK law. Platforms' freedom of expression complaints and appeals procedures under the regulator's oversight, would not justify any extension of the legislative scope, or provide sufficient safeguard for press freedom. Nor must any guidance or operational practice lead to the refusal or down grading or barring of audience from news publishers' lawful online content by the platforms, as a result of any of the measures required by the new regime, including any relating to the protection of children from harmful content. This is particularly important if the VSP regime is to be used as a model for the broader online harms regime.

Scope: no change to exclusion of online newspapers from scope

NMA has appreciated its constructive dialogue with Ofcom and DCMS on newspapers and the scope of the revised directive and implementation in UK law. As Ofcom is aware, the NMA's chief concern is that there should be no extension of regulatory scope in respect of online newspapers and video content beyond the limits of the current AVMSD regime. We therefore welcomed the Government's response to the public consultations on AVMS implementation (May 2019) and its assurances that the revised AVMSD makes no material change to the current situation:

'Press freedom

Some stakeholders expressed concern that provisions in the revised Directive might impact negatively on press freedom. The Professional Publishers Association (PPA), for example, stated that the government "should prioritise the safeguarding of press freedom when framing any UK primary legislation, secondary legislation, codes or guidance, to ensure magazines and news publishers remain outside the scope of the AVMSD".

The Government is committed to protecting the freedom of the press and recognises that a vibrant and free press plays an invaluable role

in our cultural and democratic life. We want to make sure that this continues, with high journalistic standards working in the public interest. As noted in the consultation, online newspapers are out of scope of the directive, except where they provide a dissociable video-on-demand service, this is reflective of the position under the existing Directive as interpreted in accordance with EU case law. Therefore, we do not consider there to be a material change to the current situation with regard to press freedom in the measures within the Directive.

Scope

Stakeholders representing the news and publishing industry also expressed concern over a potential increase in scope of regulation. The NMA stated that it “would strongly oppose any government proposals for implementation of the revised AVMSD, including all the new regulatory requirements relating to video sharing platforms, or related legislation including the online harms white paper, which might deliberately or inadvertently extend and impose AVMSD or related requirements, restrictions, liabilities and sanctions upon news publishers, newspaper websites, content and services where these are outside the scope of the AVMSD.”

The government maintains its position that while newspaper websites remain outside the scope of the 2018 Directive and the future online harms framework, standalone parts of newspapers’ websites providing video services which are independent of the journalistic activities in content and form do fall into scope. The use of videos on websites, blogs and news portals which are connected to the journalistic activities falls outside the scope of the new provisions. This change reflects existing case law of the European Court of Justice on the issue, which found that the concept of a programme within the AVMS Directive includes video under the sub-domain of a newspaper website.’

We therefore trust that the implementing legislation, Ofcom's guidance for service providers to help them identify whether they meet the VSP definition and Ofcom's interpretation and application of the definition in practice will all ensure that there is no extension of scope to online newspapers and any use by them of videos on websites, blogs and news portals which are connected to journalistic activities.

Measures to protect young persons from harmful content and all users from criminal content and incitement to hatred and violence

We recognise that the new VSP regime under the EU directive will initially only apply to entities with head offices based in the UK entities. These VSPs may not be primary carriers of news media content including video. However, we also note that the regime is intended to serve as a model for the forthcoming UK online harms regime, which will govern entities with headquarters outside the UK and which may be used to a much greater extent by news publishers.

The NMA has welcomed the Government's assurances that online newspapers and their journalistic content should also be out of scope of the new online harms' regime. It is vital that such exemption should apply to news publishers' content wherever it is published, whether on publishers' own websites or by third parties. It is important that newspapers' content should not be barred or discriminated against in practice by VSPs or platforms under the safeguarding measures required by an interim VSP regime or any online harms regime modelled upon it. This would include any measures primarily intended to protect children, such as age assurance, design requirements, algorithmic or human intervention might bar audience access to news content. We refer you also to the NMA/ICO discussions on the Age Appropriate Design Code, including the Media FAQs and the

[Explanatory Memorandum to the AADC laid before Parliament.](#)

We therefore hope that Ofcom's own guidance to VSPs and regulated entities will not stipulate any unnecessary or disproportionate measures which might lead to VSPs and other entities refusing or downgrading news publishers' content on their services. We note that Ofcom intends to consult further and the NMA and its members would be very happy to discuss any issues in more detail.