

Channel 4's response to Ofcom's consultation on proposals for the regulation of advertising on video sharing platforms (VSPs).



Channel 4 believes that the existing self regulatory system for online advertising fails to sufficiently protect audiences from both inappropriate and illegal advertising. We therefore consider that statutory regulation is required.

In order to have an effective regime for regulating online advertising, which ensures viewers have equal protections across all media, five key principles must be followed.

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- 01 Online platforms must be legally obliged to ensure compliance with rules online

 - 02 Advertising should be complied before it is published via online platforms

 - 03 There must be clear legal/regulatory incentives for compliance

 - 04 Non-compliance must be risky and unattractive

 - 05 There needs to be an effective and well-resourced regulator.
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The current self-regulatory system has seen online players fail to keep even fraudulent advertising off their platforms, illustrating why a more stringent online advertising regime is needed. The CMA (Competition and Markets Authority), the FCA (Financial Conduct Authority) and the Bank of England have all highlighted the lack of effective regulation of online advertising recently, and the CCDH (Centre for Countering Digital Hate) revealed that they found *“Facebook accepting paid anti-vaxx adverts and YouTube displaying adverts on anti-vaxx videos.”*¹

We note that in the Work and Pensions Committee’s March 2021 report around protecting pension savers, the Committee highlighted the fact that: *“It should not require legislative solutions to deter global firms from benefitting from the proceeds of crime, but unfortunately legislation is clearly needed”* adding that, *“regulators appear powerless to hold online firms to account for hosting scam advertisements in the same way they would be able to for traditional media”*.²

In contrast, the regime for TV advertising regulation is effective in part because it is very clear who is ultimately responsible for compliance, with binding legal obligations and serious sanctions for non-compliance.

In TV, ultimately it is the broadcaster (i.e. the distributor/publisher) who has both control of where advertising is placed (i.e. alongside which programme content it appears within a linear schedule) and responsibility for ensuring the adverts it carries comply with the rules.

There is a thorough process of compliance, pre-transmission, carried out by Clearcast, the dedicated advertising compliance organisation. The advertiser and advertising agency has some incentive to comply given the possibility of lost cost of creative/production (and negative PR) if an advert is non-compliant. However, in practice this incentive is often not strong given that campaigns are often over by the time regulatory decisions are reached. What matters is the filter of the regulated broadcaster.

Broadcasters also have binding legal (licence) obligations to comply with the BCAP advertising code and face the possibility of fines, shortened licence duration or even revocation of licences in the event of serious non-compliance. The result is careful pre-scrutiny and a high level of compliance.

¹ https://252f2edd-1c8b-49f5-9bb2-cb57bb47e4ba.filesusr.com/ugd/f4d9b9_6910f8ab94a241cfa088953dd5e60968.pdf

² <https://publications.parliament.uk/pa/cm5801/cmselect/cmworpen/648/64803.htm>

Broadcast advertising therefore already adheres to the five key principles outlined above, and we consider that online advertising needs to be regulated in a similarly rigorous fashion.

The remainder of our response builds on these overarching points.

Question 1a: Do stakeholders agree with Ofcom's proposed guidance on control of advertising, including the application of the terms 'marketed, sold or arranged'?

Channel 4 agrees with the application of the terms 'marketed, sold or arranged' with regards the definition of 'control of advertising': to mean *'when a VSP provider is involved in making the advertising available on their platform, which may include (but is not limited to): enabling advertisers to buy advertising on their platform, either directly or via a third party; providing the tools to enable advertisers to serve advertising on their platform; and/or providing tools that enable advertisers to target or optimise the reach of their advert'*

Channel 4 also agrees that VSPs should have responsibility for complying with both the content and scheduling of adverts and to be legally responsible for advertising for their services that are solely under their control. Channel 4 welcomes that VSPs would be expected to make advertisers and other third-parties they engage with aware of the relevant requirements, and to invest in the necessary systems, tools and technologies to enable them to meet compliance requirements.

However, we would also expect that VSPs should be required to uphold a minimum and consistent standard, with a clearly defined Code Of Conduct being created and implemented by Ofcom so that the expectations regarding the management of advertising are clear and that VSP's understand that the failure to uphold these standards will lead to robust enforcement.

Ofcom should also give clear guidance, detailing its expectations when it refers to

"taking prompt action to remove or edit advertising that may contravene the requirement and taking steps to prevent the reoccurrence of any issues identified with advertising on their platform".

Given the extreme harm that can be caused by adverts that do not comply with the CAP advertising codes, including the Coronavirus misinformation and anti vaxx content noted above or the plethora of scam financial ads that the Work and Pensions Committee recently highlighted as:



an online free for all, where scammers can advertise with impunity while the tech giants line their pockets from the proceeds of their crimes

Work and Pensions Committee

There must be a clear expectation as to the speed of intervention required by VSP's in dealing with the removal of unlawful advertising

Question 1b: If you do not agree with the proposed guidance on control of advertising, please explain why, and include any alternative approaches.

Whilst we appreciate that any increase in the regulation of advertising on VSPs is a step in the right direction in terms of protecting the public from illegal and harmful advertising and preventing online players from benefiting financially from these types of ads, we believe that the only truly effective solution to the myriad problems in this area is the introduction of a level playing field between online and broadcast advertising interventions following the principles we set out above.

With self-regulation of advertising online, increasingly appearing ineffective at preventing illegal and harmful advertising, we believe that online players should be required to carry the responsibility for ensuring the compliance of the advertising they sell, place and profit from. VSPs should be mandated to utilise the same "basic hygiene" practices adopted by TV Broadcasters, including the preclearance for advertising, which is a very minimum in what is required to ensure adequate protection from harmful or illegal advertising for users of these services.

Question 2a: Do stakeholders agree with Ofcom's proposed framework for regulating VSP-controlled advertising?

Channel 4 agrees with Ofcom's proposed framework for regulating VSP-controlled advertising, whereby rules covering general advertising requirements and prohibited and restricted products will be contained in a VSP annex in the CAP code and enforced by the ASA.

The proposed framework largely mirrors the established system which already exists with regards On Demand Programme Service providers and we welcome the intention for Ofcom to be given a range of formal enforcement powers.

However we reiterate our call for a Code of Conduct setting out a requirement of minimum and consistent standards so that the obligations for VSPs are made clear and enforceable with a regime that clearly demonstrates what the penalties for failing to comply will be.

Even with the Ofcom proposal on the regulation of advertising on VSPs, the levels of protection for users of these services will not be equivalent to the levels of protection that they experience whilst using Broadcast TV services.

Question 2b: If you do not agree with the proposed framework for regulating VSP-controlled advertising, please explain why, and include any alternative approaches for regulating advertising on VSPs.

N/A

Question 3a: Do stakeholders agree with Ofcom's proposal to designate the ASA as a co-regulator for VSP-controlled advertising?

Channel 4 welcomes Ofcom's proposal 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, we do have concerns over the additional workload this will bring, much of which will require technical skills and abilities that the ASA may not currently have inhouse and does not have the budget or resource to employ. Consequently, understanding how the ASA plan to create a team with the right skill set and supported by the right

technical capabilities and systems is essential in ensuring that there will be effective monitoring within the online advertising ecosystem.

Question 3b: If you do not agree that it would be appropriate to designate the ASA as a co-regulator for VSP advertising, please explain why, and include any alternative approaches.
N/A

Question 4a: Do stakeholders agree with Ofcom's proposed guidance on non-VSP-controlled advertising?

See 4b.

Question 4b: If you do not agree with the proposed guidance on non-VSP-controlled advertising, please explain why, and include any alternative approaches

Channel 4 recognises the added complexity for VSPs in ensuring advertising which is not under their direct control adheres to the regulations. However, Channel 4 believes it is within the ability of VSPs to effectively monitor and control this advertising and there should be a requirement to have "appropriate measures" in place to minimise harm. In the event that these measures are not taken or where they are not properly enforced by VSPs there should be robust enforcement action by the regulator.

We welcome the requirement for VSPs to include terms and conditions by which users must abide, along with functionality for users uploading a video to declare if the video contains advertising. However, it is essential that this is robustly enforced by VSPs. Content which contains undeclared advertising should be removed immediately. We are also concerned that this requirement may not go far enough in making VSPs liable and responsible for the advertising they carry on their platforms, particularly with regards to concerns around the protection of children and other vulnerable groups. If the technology exists to enable users who upload content to identify that it contains advertising, it is unclear to Channel 4 why VSPs are unable to ensure that the identified advertising adheres to the rules?

In March 2021 the ASA published their Influencer Monitoring Report, which found that their rules were being followed (when Instagram posts were ads) only 35% of the time. Channel 4 considers this to be an astonishingly low level of compliance which requires urgent remedy. We do not consider the use of a web page on the ASA site which names and shames some of the worst offenders to be a sufficient response or one that is likely to drastically improve compliance rates.

Mandating that online players are responsible for all of the advertising they carry in the same way that broadcasters are, is the only effective solution to the inevitable situation where non-compliant and potentially harmful advertising will still be able to find its way to the public because it has been designated as "non VSP controlled advertising".

Question 5a: Do stakeholders agree with Ofcom's proposed approach to regulating non-VSP-controlled advertising?

See 5b.

Question 5b: If you do not agree with the proposed approach to regulating non-VSP-controlled advertising, please explain why, and include any alternative approaches.

Although Channel 4 recognises the VSPs have limited control over the advertising that they have not marketed, sold or arranged, we believe that in order to ensure adequate protection for the public, both the VSP and the advertiser should be held accountable for any breaches by non VSP controlled adverts.

Additional information

We noted that there was no reference in this proposal regarding how the Ofcom guidance intends to make clear needs 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.