



Consultation: Guidance for ODPS providers on obligations relating to European works, comments from Paramount Global

25 March 2022

Paramount Global (Paramount), formerly ViacomCBS, welcomes the opportunity to respond to Ofcom's consultation on its guidance for ODPS providers regarding obligations relating to European works.

For three decades Paramount International has been one of the most successful international suppliers of pay-TV channels to the UK market, in particular MTV, Nickelodeon, and Comedy Central. The purchase of Channel 5 in 2014 not only extended the Paramount footprint into free-to-air, public service commercial television, it represented a step-change in our ambitions for our UK business: to invest in more local original programming, to create synergies between our pay and free channels, and to export more programmes and formats globally.

Paramount Pictures has been making and distributing films across the world for over 100 years. Paramount Pictures is a considerable investor in local UK film production and has spent more than one billion dollars in the UK over the past five years.

Paramount has a significant interest in the regulation of VOD services. It distributes catch-up and limited amount of first-run content through BVOD service My5, it has a number of ODPS licences for other TV-like services, and it plans to launch new SVOD service Paramount+ in the UK later this year.

SUMMARY

- We are supportive of Ofcom's general approach to implement the 30% quota obligation in line with guidance issued by the European Commission. We feel it is important that although the UK has left the EU, media policy should be broadly aligned so as to mitigate risk of additional regulatory burdens solely in the UK market
- Given this type of quota obligation and reporting mechanism is novel for ODPS services in the UK, we would strongly recommend a phased implementation of the quota for new services, as has been done in other jurisdictions. This would reduce regulatory barriers to entering the UK market.

CONSULTATION QUESTIONS

Question 1: Do you have any comments on our proposed guidance on European works requirements?

Definition of European Works

- We agree with the draft guidance's approach to defining European Works. We support using the definition set out in Art. 1 of the Audiovisual Media Service Directive (AVMSD). This is consistent with other jurisdictions.

Calculation of the quota

- We welcome Ofcom's assertion that the calculation of the quota should be in line with guidance issued by the European Commission - 30% of titles to be European Works where: one feature-length film and, where a franchise consists of different films, each film in the franchise should be understood as constituting a separate title; or one season of a TV series.
- Additionally, we welcome Ofcom's recognition within the consultation that some television programmes "have a duration and production cost similar to those of films" and that under such circumstances it, "may be appropriate for each programme to be given a higher weighting in calculating the share of European works".

Prominence

- We welcome Ofcom's view that, "there is no one-size-fits-all solution for securing prominence of European works. This requirement should therefore be met in ways that are relevant to the nature of a service and its user interface". It is crucial that delivery of prominence does not undermine the technical development of the user-interface or the viewer's experience navigating content on a service.

Exemptions

- We note that the quota will not apply a) if the service has a low turnover (€2M/£1.7M) or a low audience (400,000 monthly unique users – to be reviewed annually); or b) it is impracticable or unjustified for the requirements to apply because of the nature or theme of the service.
- We are supportive of this approach and welcome comments in the consultation paper that decisions regarding whether the quota is "impracticable or unjustified" will be at "Ofcom's discretion". We feel it is important that the regulator is able to make qualitative judgments about a services obligations, rather than solely relying on rigid data points to determine compliance.

Question 2: Do you have any comments on our proposed guidance on the steps Ofcom will take to secure compliance?

- We note that Compliance with the 30% quota should be calculated by the share of European works titles out of the total number of titles in the catalogue, as an average

over the calendar year. Each Spring ODPS services will be asked to report on the previous calendar year. The 1st year request will take place in Spring 2023.

- In this context ODPS services will be required to answer questions on: the amount of European works in their catalogues; how they are making this content prominent; and, where relevant, reasons for why exemptions apply. This is therefore an additional regulatory burden for service in terms of both compliance with the quota and additional data collection and reporting obligations.
- In order to reduce regulatory barriers we strongly support a phased-in approach over a multi-year period. This would offer a more proportionate approach to what is a significant new requirement, and would be in line with that adopted by other regulators, including the Netherlands.
- By way of example, the phase-in that the Commissariaat voor de Media (CvDM), the regulator in the Netherlands, requires 10% European Works in year one, 15% in year two, and 25% in year three, with year four fully compliant. The Netherlands requires a service to apply for the phase-in and the percentages can be tailored to a particular service where justifiable. We feel this is a sensible approach and recommend Ofcom fully review and consider the benefits of this approach.