

Response of the NS and NPA to Ofcom's Consultation on Proposals for the Regulation of Video on Demand Services

Questions 1-4, 5

The Newspaper Society (NS) represents regional media companies which publish 1300 newspapers, 1500 websites, 600 niche and ultra local titles. They are uniquely committed to local journalism and deliver trusted local news to 40 million print readers a week and 37 million web-users. The Newspaper Publishers Association (NPA) represents national newspaper companies. Thirty-seven million people read a national newspaper every week. National newspaper online sites have a strong (and growing) market presence and are increasingly being deployed in partnership with the print version of the paper to extend reach even further.

The UK press has strongly opposed legislation that could fetter its freedom to investigate, report, comment and campaign. It has always resisted special statutory or co-regulatory controls, over and above the general law relating to freedom of expression. It opposes any form of state licensing of its publications in any form; subjugation to statutory regulators, especially regulators with powers of prior restraint, suspension or cessation of publication or sanctions such as fines backed by criminal sanctions or civil alternatives, such as 'stop now' powers; the state imposition of content controls, especially those which can inhibit editorial freedom and news content, such as age restrictions, rules intended to regulate impartiality, questions of taste, decency and audience suitability including age restrictions. It is and remains particularly wary of 'regulatory creep' and any extension of broadcasting controls to its online or print content.

The newspaper industry therefore supported the UK government's attempts to restrict the remit of the Audiovisual Media Services Directive during its passage through the EU legislative process. The exemption of electronic versions of newspapers and magazines from the directive's remit, as set out in Recital 21, is very important. In our view this should be set out in full, without qualification in the Regulations and also quoted in full in the non-statutory Scope Guidance without the somewhat circular qualification, in sections dealing with services outside remit of Ofcom and the designated co-regulatory body.

(e.g. amend "4.54 d Electronic versions of newspapers and magazines (~~excluding any on-demand programme services offered by newspapers and magazines~~) (Recital 21)" at page 23 of the draft guidance)

We understand that the Government was originally intent upon light touch regulation and intended that any legislation should do no more than implement the terms of the directive. However we understand that the forthcoming legislation may actually confer wider powers upon regulators and stricter controls over service providers and the content of their services than the EU legislation requires. We also note that there appears to be continuing considerable difficulty in defining scope and determining what will fall inside and outside the remit of Ofcom and the co-regulatory body, not least in the non-statutory guidance and its application.

These issues are of considerable concern to the press. It is imperative that newspaper companies, their websites and their online services do not in practice get enmeshed by statutory and co-regulatory controls which were not supposed to govern their activities. Lengthy, complicated and costly referral and appeal processes to determine the boundaries of the new controls, or regulators' and co-regulators' unjustified threats of the use of civil 'stop now' powers, enforcement powers or sanctions such as criminal prosecution or fines could also be strong inhibitors of press and commercial freedoms. The interpretation of criteria such as editorial responsibility and control could have ramifications in other areas of media regulation and impact upon freedom of expression.

We would find it helpful to discuss these matters in more detail. We would be happy to help to arrange a meeting to do so.

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