

Title: R18 Content Access Controls IA No: RPC13-DCMS-1756(2) Lead department or agency: DCMS Other departments or agencies: Ofcom and ATVOD	Impact Assessment (IA)		
	Date: 30/04/2014		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: Katharina Ribbe x2161			
Summary: Intervention and Options			RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
N/A	N/A	N/A	Yes IN

What is the problem under consideration? Why is government intervention necessary?
Distribution of material that is R18 rated by the British Board of Film Classification is restricted in 'hard-copy' such as DVDs by the Video Recordings Act 1984. UK Video on demand services are co-regulated by the Authority for Television On Demand (ATVOD) and Ofcom. There is also a regulatory inconsistency with hard-copy material. As VOD becomes more prevalent, the lack of clarity and inconsistency increases the risk of people under 18 being able to access R18 rated content.

What are the policy objectives and the intended effects?
To clarify the law to bring the regulation of VOD services in relation to R18 material in line with the restrictions applying to 'hard-copy' material as set out in the Video Recordings Act. That is, R18 material must be behind controls that ensure only persons 18 or over can access it.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 2 Do nothing: This would continue the regulatory inconsistency that gives less certainty to the protection of under 18s from R18 material online than in hard copy. The potential costs of this inconsistency are likely to rise as VOD services become more prevalent.

Option 1 (Preferred): Amend legislation to provide that material which is classified as R18 (and equivalent material) cannot be provided by UK VOD providers unless it is protected by CAC systems. This would create a clear and consistent regime for service providers and regulators.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 04/2018					
Does implementation go beyond minimum EU requirements?				Yes	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: n/a	Non-traded: n/a

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ Date: Ed Vaizey 10 IV 14

Summary: Analysis & Evidence

Policy Option 1

Description: VOD R18 Regulation

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			N/A

Description and scale of key monetised costs by 'main affected groups'

Other key non-monetised costs by 'main affected groups'

At present, the cost to VOD service providers is negligible because the industry tends to put R18 material behind CAC systems. There are also no additional costs on ATVOD and Ofcom because the use of CAC systems is already being enforced.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			N/A

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

The measure clarifies what material must be behind CAC systems, thereby reducing potential litigation risk for service providers and their regulators: ATVOD and Ofcom.

Key assumptions/sensitivities/risks

Discount rate (%)

n/a

Current CAC systems are effective in preventing consumption by people under 18 via VOD.
That people under 18 are harmed by R18 material.
BBFC rating scheme provides clear guidance to industry.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	Yes	Zero net cost

Background:

VOD, BBFC, ATVOD, Ofcom and CAC

- *Video-on-Demand (VOD)* are services that allows users to select and watch video content when selected (i.e. on demand). Television VOD systems either stream content through a media box or other device allowing viewing in real time or by permitting downloading of content to be viewed later.
- *The British Board of Film Classification (BBFC)* is an independent, self-financing and not-for-profit body responsible for classifying video and film content. In the context of this impact assessment, it classifies content with the following ratings (U, PG, 12, 15, 18, R18)) for the film and video industries.
- *The Authority for Television On-Demand (ATVOD)* is an independent co-regulator for the editorial content of UK VOD services that fall within the statutory definition of On-Demand Programme Services.
- *The Office for Communications (Ofcom)* is an independent regulatory body with responsibility, among others, for ensuring competition and consumer interests in the UK broadcasting, telecommunications and wireless communications sectors. It is also a co-regulator of UK VOD services.
- *Content Access Control (CAC)* are systems that 1) verify the user is aged 18 or over and 2) require each time the user returns a security control, like a password or PIN number, is used.

Video Recordings Act (VRA)

The Video Recording Act gives the Secretary of State power to designate a person as the authority responsible for determining whether video works are suitable for classification. Currently the designated authority is the BBFC. Material determined by the BBFC as R18 is only allowed to be shown in specially licensed cinemas, or sold in licensed sex shops. It may not be distributed by post (mail order) and can only be seen by, or sold to, adults.

For the purposes of this IA, 'R18' refers to the classification set by the BBFC. This classification refers to sex works containing clear image of real sex, strong fetish material, sexually explicit animated images, or other very strong sexual images.

The Video Recordings Act applies to, for example, video recordings i.e. DVDs. It does not apply to broadcast material (or indeed to VOD services) which fall under the Communication Act 2003.

Current content regulation applied to VODs

VOD content is currently regulated by Part 4A of the Communication Act 2003 inserted by the Audiovisual Media Services Regulations 2009 and 2010. Section 246E states:

Harmful material

- 1) *An on-demand programme service must not contain any material likely to incite hatred based on race, sex, religion or nationality.*
- 2) *If an on-demand programme service contains material which might seriously impair the physical, mental or moral development of persons under the age of eighteen, the material must be made available in a manner which secures that such persons will not normally see or hear it.*

Current legislation requires VOD service providers to implement systems that prevent access to content that *might seriously impair* the physical, mental or moral development of people under 18.

Legal uncertainty from current legal framework

➤ Uncertainty

Current regulation on R18 equivalent material relies on a causal relationship with impairment. The statutory test is whether it 'might seriously impair' those under 18, thereby providing scope for interpretation. For VOD service providers it is not clear what might seriously impair and therefore determine what content will pass or fail this test.

This uncertainty is likely to grow as the VOD market grows. Increased competition will tend to increase the market pressure to avoid having content behind CAC systems. As such, there will be more pressure to question what *might* seriously impair. It follows that the present lack of clarity may lead to an increase for potential litigation and potential policy objective failure.

➤ Benefit of consistent regulation

The statutory framework for regulating hard-copy DVDs is set out in the Video Recording Act. The BBFC determines the suitable classification of video works in accordance with its classification guidelines. Under this system there is less uncertainty regarding what content must be protected from access by people under 18. By using the BBFC rating system to categorise VOD content there would be less need to consider the causal impact of impairment arising from R18 equivalent material.

Problem under consideration:

Distribution of material that is R18 rated by the British Board of Film Classification (please see here for more information <http://www.bbfc.co.uk/what-classification/r18>) is restricted in 'hard-copy' such as DVDs by the Video Recordings Act 1984. UK VOD services are co-regulated by the Authority for Television On Demand (ATVOD) and Ofcom. The statutory framework protecting people from harmful material is unclear because it relies on a demonstration that it 'might seriously impair' those under 18, thereby providing scope for interpretation. There is also a regulatory inconsistency with hard-copy material. As VOD becomes more prevalent, the lack of clarity and inconsistency increases the risk of people under 18 being able to access R18 rated content. We think all such content should be behind access controls.

The measure proposed is to provide that material which is classified as R18 (and equivalent material) cannot be provided by UK VOD providers unless it is protected by Content Access Control (CAC) systems.

Rationale for intervention:

Ofcom and ATVOD are enforcing CAC systems to protect children from R18 material on material distributed via VOD services. However, the legal position of the regulators in enforcing CAC systems is uncertain.

The result is regulatory inconsistency and intervention is needed to bring VOD regulation on R18 material in line with regulations set for 'hard copy' content governed by the Video Recordings Act.

Policy objective:

- Align the regulation of VOD services with the regulations on DVDs in relation to material classified R18 pursuant to the Video Recordings Act.
- Protect people under 18 from accessing and consuming R18 content via VOD.
- Ensure consistent regulatory framework despite changing technologies and distribution systems.

Description of options considered (including do nothing):

➤ **Option 2: Do nothing**

This would continue the regulatory inconsistency that gives less certainty to the protection of under 18s from R18 material online than in hard copy. The potential costs of this inconsistency are likely to rise as VOD services become more prevalent.

➤ **Option 1 (preferred): Amend legislation and apply Video Recordings Act regulation to VOD**

Amend legislation to provide that material which is classified as R18 (and equivalent material) cannot be provided by UK VOD providers unless it is protected by CAC systems. This would create a clear and consistent regime for service providers and regulators.

Monetised and non-monetised costs and benefits of each option (including administrative burden):

➤ **Option 2: Do Nothing**

The existing legislation would remain the same. Therefore for the purposes of this IA the 'do nothing' sets the baseline for the cost and benefit analysis. Without any change to the current regulatory framework economic circumstances remain the same. As such the overall net present value (NPV) is zero.

➤ **Option 1: Alter legislation and apply VRA regulation to VOD**

Costs

- *Cost to business* – All VOD service providers that offer R18 material would have to adjust to the BBFC rating system and ensure CAC systems prevent access R18 material by people under 18. However, the guidance issued by ATVOD adopting a precautionary approach is that material which might seriously impair the development of minors may include content that has been classified R18 or equivalent material. Since ATVOD and Ofcom already enforce the use of CAC systems, the cost of the proposed measure will be negligible. The most common CAC system currently used is a pin code, which is dependent on adults using it effectively. This weakness may result in a more costly and sophisticated CAC system in the future. CAC may act as a barrier to consumption by adults, preventing revenue from being generated from R18 material. Again, the net cost is negligible as this barrier is already implemented. Due to negligible costs it would not be proportionate to monetise.
- *Administrative burden* - The proposal to require R18 material to be placed behind CAC system is not a major change from the administration of current legislation. It would not impact on ATVOD's costs in relation to investigating breaches as this cost has already been incurred due to ATVOD's current interpretation of the existing legislation.

Benefits

- *Preventing harm from demerit good* – According to literature reviews commissioned by Ofcom (Cumberbatch report 2010 and Helsper report 2005) there is inconclusive evidence that R18 equivalent material causes harm to people under 18. This conclusion is arguably the result of the inability to test the harmful effects because of ethical considerations relating to intentionally exposing people under 18 to R18 material. Nevertheless, it draws into question whether or not R18 material "may seriously impair" as per current legislation. The Government is of the view that

there is sufficient expert opinion that R18 content causes harm to people under 18 so CAC systems do prevent the consumption of demerit good. Since CAC systems are already enforced the likely additional benefits resulting from the measure are negligible and therefore not proportionate to monetise.

- *Reduced regulatory uncertainty* – By implementing an R18 rating system rather than a legal test that relies on what ‘might seriously impair’, greater legal certainty is achieved. Enforcement of CAC system can be conducted in a similar manner as film, video and DVDs (hard-copy). As the adoption of VOD technology grows there is greater certainty for the Ofcom, ATVOD and VOD service providers over what content should and should not be placed behind a CAC system. This reduces the risk of litigation for regulators and service providers. For small businesses that intend to enter the market greater, certainty of what content needs to be placed behind CAC systems would reduce business costs and barriers to entry.

Rationale to justify level of analysis (proportionality):

- CAC systems have already been implemented by current VOD service providers and as such the cost to business by the proposed measure is negligible. Although future systems may be more costly, it would not be proportionate to monetise for the current IA.
- Administrative burden is estimated to remain the same and therefore does not need to be monetised.
- Monetising the benefit for people under 18 not being exposed to R18 material is inherently difficult.
- The benefit of legal certainty could potentially be measured by the occurrence of fines and litigations. Since VOD is a new technology there is insufficient evidence to monetise this benefit.

Risk and assumptions

- *Business moving overseas risk* - Restricting access to R18 material may lead to businesses moving outside of UK’s jurisdiction in order to avoid regulation. This would reduce the benefit of CAC systems. Nevertheless, there is public value in ensuring that there is consistency for regulation across platforms so that UK based VOD firms are compliant with the UK’s views on harmful content.
- *CAC system failure risk* – Depending on the system implemented there is a risk that the CACs fail and people under 18 consume the demerit good and its harmful effects.
- *BBFC rating system* – The proposed measure intends to apply the rating system designated by the Secretary of State, in this case the BBFC, on VOD. As such, it is dependent on the effectiveness of the rating system supplied by the BBFC.

Direct costs and benefits to business calculation (OITO)

The proposed measure is an IN with zero net business cost because there is no change in enforcement by ATVOD and Ofcom.

Additional considerations include:

- The cost to business from implementation of the measure is negligible since current VOD service providers have already implemented the required CAC systems.

- Regulatory certainty in terms of the legal framework does not provide an additional cost to new entrants, because the CAC systems are already required. Instead it gives new entrants clarity regarding the legal framework and under what circumstances the regulator will issue fines.
- Increased confidence that material available on VOD does not have the potential to expose people under 18 to R18 material may enhance public confidence and may translate into increased demand for VOD services in general.

Small and Micro Business Assessment

There are a number of small and medium sized firms among the UK-based suppliers of R18 content which may be affected by this measure. However, they are already involved in supply of “hardcopy” versions of this content and so have already installed CAC access systems. Hence, the measure is very unlikely to affect existing suppliers or potential new entrants.

The social and moral risks arising from supply of R18 content to those under 18 years of age occur irrespective of the size of the content supplier. For this reason, the Government does not believe that it is appropriate to mitigate the impact of this measure for small and medium sized business.

Wider Impact

Economic and financial

The policy may lead to increased confidence that material available on VOD does not have the potential to expose people under 18 to R18 material. This public confidence and CAC may incentivise the use of VOD services.

Social

Preventing the exposure of R18 material will support the positive development of people under 18.

Environmental

There are no major environmental impacts expected from the preferred option.

Summary, preferred option and description of implementation plan:

Distribution of material that is R18 rated by the British Board of Film Classification is restricted in 'hard-copy' such DVDs by the Video Recordings Act 1984. UK VOD services are co-regulated by the Authority for Television On Demand (ATVOD) and Ofcom. The statutory framework protecting people from harmful material is unclear because it relies on a demonstration that it ‘might seriously impair’ those under 18, thereby providing scope for interpretation. There is also a regulatory inconsistency with hard-copy material.

This imbalance in regulation leaves legal uncertainty that may result in people under 18 exposed to R18 material due to lack of Content Access Control systems. The measure under consideration entails a legislative change that reduces legal uncertainty. The legislative change is, in part, an expansion of existing legislation applied to similar formats.

According to ATVOD, all VOD services providers currently have a pin code system that restricts access to R18 material. Little to no immediate action would be required by business.

We will amend the statutory framework to provide that material which is classified as R18 (and equivalent material) cannot be provided by UK VOD providers unless it is protected by Content Access Control systems.