Title: Revision of the Audio-Visual Media Services Directive (AVMSD) **IA No:** **RPC Reference No:** RPC-4449(1) - DCMS **Lead department or agency:** Department for Digital, Culture, Media and Sport **Other departments or agencies:** N/A	Impact Assessment (IA) **Date: 01/01/2020** **Stage: Final** **Source of intervention: EU** **Type of measure: Secondary Legislation** **Contact for enquiries:**

Summary: Intervention and Options

RPC Opinion: Fit for purpose

Cost of Preferred (or more likely) Option (in 2016 prices)			
Total Net Present Social Value	**Business Net Present Value**	**Net cost to business per year**	**Business Impact Target Status**
-£100.8m	-£84.5m	£9.82m	Non-qualifying regulatory provision (NQRP)

What is the problem under consideration? Why is government intervention necessary?

Revision of the AVMSD is needed to reflect the significant changes in the ways people consume audiovisual content since 2007, by updating and aligning rules between linear and on-demand programme services (ODPS), and introducing requirements for video-sharing platforms (VSPs) for the first time.

- Negative externalities: One in five adult users in the UK have experienced some form of harm related to content online. This was most prevalent for 16-24 year olds (31%)
- Information failure: Content is an experience good, consumers don't know what is safe to view
- Government failure: There is currently a distortion in the market where linear services are subject to much higher standards, whilst other media forms increase in popularity

What are the policy objectives and the intended effects?

The amended Directive aims to create a regulatory environment that is fairer for all players in the audiovisual sector, protecting minors and tackling hate speech in all audiovisual content, better promoting European audiovisual productions and ensuring the independence of audiovisual regulators.

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

Option 1: Do nothing (not viable)

The transposition deadline (19 September 2020) falls within the Brexit implementation period (scheduled to end on 31 December 2020), provided for by the Withdrawal Agreement. Failure to implement the amending AVMSD would risk infringement proceedings being brought against the UK by the EU.

Option 2: Implement AVMSD with recommended sub-options

Implement the minimum requirements of the AVMSD, in accordance with government guiding principles for EU legislation. The Directive gives the UK some leeway of determining the precise implementation of provisions. Recommended sub-options are set out in this IA, with alternative options being discussed through the IA to justify the rationale for Option 2 **.**

Will the policy be reviewed? No **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?		No		
Is this measure likely to impact on international trade and investment?		Yes		
Are any of these organisations in scope?	**Micro** N	**Small** Y	**Medium** Y	**Large** Y
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, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible : Catherine Colebrook Date: 7 Feb 2020

Summary: Analysis & Evidence   Policy Option 2

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2018	**PV Base Year** 2020	**Time Period Years** 10	**Net Benefit (Present Value (PV)) (£m)**		
			Low: -£209.1m	**High:** -£25.3m	**Best Estimate: -£116.1m**

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	£5.3m		£7.5m	**£69.2m**
High	£9.3m		£27.0m	**£231.2m**
Best Estimate	£7.3m		£17.2m	**£150.2m**

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

Cost to ODPS providers of replacing non-European content with European works (c.76%).
Cost to ODPS providers of hiring additional staff to ensure prominence of European works (c.1%).
Cost to video-sharing platforms (VSPs) of coming into scope of the regulations and putting extra safeguards in place to monitor harmful activity (c.9%).
Cost to the regulator to monitor VSPs (c.13%).

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

Cost to VSPs of additional compliance with the regulation beyond the level of monitoring staff required.
Cost to ODPS providers of ensuring prominence of European works, beyond staff costs.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low			£2.6m	**£22.1m**
High			£5.2m	**£43.9m**
Best Estimate			£4.0m	**£34.2m**

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

Benefit to domestic content producers, who will receive greater purchases due to quotas imposed on ODPS providers (100%).

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

Benefit to consumers of VSP content, who will view less harmful content.
Benefit to consumers of ODPS content, who should have a greater diversity of sources and choices.
Spillover benefits for the UK production industry of greater demand for British content.
Benefit of increased government revenue from higher domestic business activity.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

Assumptions are made on VSP compliance, based on independently commissioned research, as well as the required number of moderators.

Assumptions are made on how ODPS providers would comply with the legislation, the cost of content, the proportion of funds transferred to the UK and the profit forgone by this change.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:**
Costs:	**Benefits:**	**Net:**	
£15.3m	**£4.0m**	**£11.3m**	N/A

DETAIL & SUPPORTING EVIDENCE

Section I: Rationale for government intervention

The Audiovisual Media Services Directive (AVMSD) is an EU-wide directive, governing coordination of national legislation on all audiovisual media, both traditional TV broadcasts, on-demand services and, for the first time, also video-sharing platforms. The AVMSD (Directive 2010/13/EU) was initially implemented into UK law in 2010 by a series of regulations which primarily amended broadcasting legislation, namely the Communications Act 2003 and the Broadcasting Acts 1990 and 1996. Revision of the AVMSD aimed to modernise the existing rules by ensuring a level playing field between the traditional broadcasting sector i.e. television, and new services such as on-demand programme services (ODPS, e.g. Netflix) and video-sharing platforms (VSPs, e.g. YouTube).

Market failures

- **Negative externalities**: The evolution of the broadcasting market has enhanced negative externalities by creating new unregulated digital spaces. In the UK, children (under 16) have reduced their viewing of broadcast TV from 151 hours in 2010 to 77 hours in 2018, whilst 16-34 year olds have dropped from 169 to 85 hours. This contrasts with a rapid increase in online viewing with 42% of adults now considering it to be their main way of watching TV and film.[1] One in five adult users in the UK have experienced some form of harm related to content online, including unsuitable content for children, pornography and/or hateful speech.[2] This was most prevalent for 16-24 year olds (31%). Video sharing sites were the 4th largest place to experience any form of online harm (13% of respondents).

  Currently live TV, catch-up TV and ODPS have statutory requirements to comply with the broadcasting code, which describes potentially harmful content and covers areas such as drug use, smoking, alcohol, violence, dangerous behaviour, sexually explicit material and offensive language.[3] However, this is not currently extended to audiovisual content on Video Sharing Platforms (VSPs). Independently commissioned research from Plum Consulting found that each of the VSPs potentially under UK jurisdiction were partially compliant with some of the revised Directives requirements.[4] However, there were several areas where the VSPs were unlikely to meet the required standards. It also showed that the vast majority of adult content platforms in the EU are based outside of the UK, meaning there is a need for international cooperation on the issue. This revised directive is therefore raising the standard of protection of minors online and reducing these negative externalities.

- **Information failure:** Online video content is an ‘experience’ good, meaning that it is hard to assess the value of it before consuming. Unregulated content on VSPs means that consumers do not know what is safe to view, which could have a knock-on effect on preferences. 36% of internet users believed it was impossible to avoid harmful content, whilst 23% were put off using social media because of ‘trolls’.[5] Conversely, 30% of adults

[1] https://www.ofcom.org.uk/__data/assets/pdf_file/0019/160714/media-nations-2019-uk-report.pdf
[2] https://www.ofcom.org.uk/__data/assets/pdf_file/0018/120852/Internet-harm-research-2018-report.pdf
[3]https://www.ofcom.org.uk/__data/assets/pdf_file/0019/81253/avms_directive_consultation_response_ofcom_uk_october_2015.pdf
[4] https://www.gov.uk/government/publications/report-on-video-sharing-platforms
[5] https://www.ofcom.org.uk/__data/assets/pdf_file/0018/120852/Internet-harm-research-2018-report.pdf

believed that VSPs were already subject to a regulator, meaning some may be over-placing their trust in certain sites. These regulations should lead to a reduction in information asymmetry and an enhancing of brand trust for VSPs. In a separate point, the revised Directive will require greater prominence of European works on ODPS platforms, this means consumers should be more able to locate more domestic content.

- **Government failure:** There is a current potential distortion in the market between broadcasters, ODPS providers and VSPs as different regulations are applied across each. This means that broadcasters are subject to stricter requirements, putting them at a competitive disadvantage. The growing popularity of ODPS and VSPs since the regulation was first introduced in 2010 gives the asymmetry added significance. Whilst one solution could be to deregulate broadcasters, that would go back on the market corrections above and previous objectives (such as the public policy objective to protect minors), therefore this directive looks to raise and/or align standards across the board.

- **Market power:** The monumental growth of particular ODPS platforms could lead to a concentration in market power which may not be in the interest of consumers. The percentage of UK households with a subscription to Netflix, Amazon or Now TV has grown from 14% in 2014 to 39% in 2018.[6] Despite the number of UK titles in these catalogues increasing since 2017, the substantial increase in library size has meant a fall in the proportion of UK content by 2% across Netflix and Amazon.[7] There could be adverse consequences on the choices of UK consumers if domestic productions become relatively less significant in the fastest growing means of TV consumption. Moreover, it has been argued that large producers in the film industry abuse their dominant position in the distribution sector to impose conditions that favour their products over those of foreign producers; therefore, the use of content quotas could be justified.[8]

Primary objectives of the Directive

The primary objective of the original AVMSD (and the Television Without Frontiers Directive which preceded it) is to ensure the effective operation of the internal market for broadcasting services by ensuring the freedom to provide broadcasting services throughout the EU. The latest revision of the Directive, which is being implemented, aims to strengthen the Country of Origin Principle which underpins that outcome, and update associated consumer protection measures in response to changes in the way audiovisual media services are consumed.

The Directive sets out minimum content standards for service providers, including rules on advertising. The AVMSD also provides that channels established in Europe are required, with some exemptions, to have a majority of transmission time reserved for works of European origin. Each national regulatory authority or body - in the UK, this is Ofcom - is responsible for ensuring the compliance of broadcasters with the minimum broadcasting standards set out in the AVMSD (for example, as to advertising content or the prohibition on audiovisual media services containing any incitement to hatred based on race, sex, religion or nationality).

The AVMSD also provides a statutory underpinning for some of the advertising rules which are set out in the Advertising Standards Authority's' Broadcasting Code of Advertising Practice (BCAP) and the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing

[6] Media Nations

[7] https://www.ofcom.org.uk/__data/assets/pdf_file/0026/149075/ampere-analysis-current-status-future-development.pdf

[8] https://www.unescodec.chaire.ulaval.ca/sites/unescodec.chaire.ulaval.ca/files/update040103section2.pdf

(CAP Code). This includes a ban on advertising tobacco or e-cigarettes, targeting alcohol advertising to minors and medicines available only on prescription.

Revision

The revision, initiated by the European Commission as part of its Digital Single Market Strategy, has aimed to bring the Directive in line with the new media landscapes and shifting market realities. The newly introduced and amended regulatory provisions have been designed to level the playing field for all audiovisual media services: traditional linear services, ODPS and, for the first time, also video-sharing platforms.

The amending AVMSD focuses on reinforcing the protection of minors and combating hate speech and public provocation to commit terrorist offences in all audiovisual content. The new rules also place an emphasis on promoting production and distribution of European works; strengthening the Country of Origin principle; allowing more flexibility in television advertising; permitting levies for ODPS and linear services in the country of operation; and guaranteeing the independence of audiovisual regulators.

Implementation of the revised AVMSD will be done mainly through secondary legislation, as the European Union (Withdrawal) Act 2018 enables the transposition of directly-applicable already-existing EU law into UK law.

Brexit implications

The UK is obliged to implement the AVMSD under the terms of the Withdrawal Agreement, as the deadline for transposition falls within the transition period. Once the directive is transposed, it will become national law and therefore valid even when we exit the EU. Any amendments to this legislation, apart from fixing inoperabilities, will need to be subject to evidence-based consultations, impact assessments and its domestic public policy implications, according to the norms of legislative process.

Without transposing the AVMSD into domestic legislation, the UK would risk infringement proceedings being brought against it by the EU. In addition, it would also negatively affect businesses and individuals as they try to apply the law effectively in a period of legal uncertainty, and it could give rise in the UK courts for potential actions such as damages on business for non-consistent application. There would be other non-legal implications, for example breach of ministerial and civil service codes and parliamentary scrutiny.

The country of origin principle is the mechanism by which organisations are subject to the regulations pertaining to the nation in which they are established, rather than each EU member state separately. For the purpose of the analysis below, we will estimate the effect on businesses currently under the UK's jurisdiction. The impact of the regulations will vary depending on future scenarios, including movements to and from the UK. Such future scenarios will be dependent on agreements outside of the scope of this impact assessment.

Policy Options

Option 1 (counterfactual option): do nothing - current broadcasting legislation

EU directives lay down certain end results that must be achieved in every Member State, and since the transposition deadline of the AVMSD falls within the implementation period specified by the Withdrawal Agreement, the UK is obliged to transpose it into national law. Failure to do so could result in infraction proceedings being issued against the UK for a period of up to 4 years after exit, and potential fines. There are also further legal and non-legal risks noted above.

Therefore the do-nothing option is not under consideration. However, for the purpose of analysis, the current regulations are placed upon business by the current AVMSD are considered to be the counterfactual.

Option 2: Implement AVMSD with recommended sub-options

The amending AVMSD introduces new/amended provisions in the fields of **reinforcing the protection of minors and combating hate speech** and **public provocation to commit terrorist offences** in all audiovisual content. The new rules also place an emphasis on **promoting production and distribution of European works**; **strengthening the Country of Origin principle**; allowing **more flexibility in television advertising**; permitting **levies for ODPS and linear services in the country of operation**; and **guaranteeing the independence of audiovisual regulators**.

We are required to transpose the Directive in full. However, the UK is already compliant with, or is exceeding, some of the newly introduced or revised provisions, hence not all new/revised AVMSD measures will require legislative interventions. **The following key changes will not incur any impact on businesses and are hence not covered in this IA**:

- **Strengthened Country of Origin Principle** with more clarity on which Member State's rules apply in each case, and possibilities for derogations in the event of public security concerns and serious risks to public health. We are working with Ofcom to ensure that revised provisions pertaining to the Country of Origin principle are accommodated in their assessment of jurisdiction, however this is not expected to have financial impact on the industry.
- **Independence of audiovisual regulators** is now reinforced in EU law by ensuring that they are legally distinct and functionally independent from the government and any other public or private body. The UK already complies with this, hence no changes will be needed.
- **Advertising and product placement:** The amending Directive introduces some very limited changes to the rules on advertising, sponsorship and product placement on TV and ODPS platforms, most notably the extension of rules relating to the content of alcohol advertising on TV to also apply on ODPS platforms, and the change to product placement rules from a general prohibition with exceptions to a general permission with exceptions. The relevant alcohol advertising rules are already broadly encompassed by the Advertising Standards Authority's UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code) which applies to ODPS platforms and is enforced through self-regulation. The practical effect of the change in approach to product placement rules is very limited, and is intended simply to provide legal certainty to media service providers. The amended Directive encourages Member States through the use of co-regulation and the fostering of self-regulation to limit children's exposure to advertising of food and drink products high in fat, salt or sugar (HFSS) - in the UK, Ofcom has required that HFSS advertising on TV not be targeted at children since 2007, and the ASA has required the same on ODPS platforms and all other non-broadcast media since 2017.[9] .
- **Measures to ensure the integrity of broadcast signals:** with an obligation on service providers not to add a window with content to the screen during the transmission of a

[9] The Government consulted on introducing further restrictions to HFSS advertising on TV and online in 2019, in an initiative unrelated to AVMS transposition. The response to that consultation has not yet been published.

programme on smart TVs without first having the agreement of the broadcaster. No evidence of this being an issue in the UK has been presented, largely because of agreed technical standards applied voluntarily by transmission operators in the UK, hence no impact on business is expected.

The following key changes are new/revised measures of the amending AVMSD, which are not currently covered by domestic legislation or content standards:

- **European audiovisual rules extended to video-sharing platforms**. The scope of the Directive is extended to user-generated videos shared on platforms when providing audiovisual content is an essential functionality of the service, including social media (e.g. Facebook) that meets that definition. See section 3.
- **Better protection of minors against harmful content**, whether on TV or ODPS. The new rules also envisage that video-sharing platforms put appropriate measures in place to protect minors. See sections 2.2, 3.
- **Promoting stronger rules against hate speech and public provocation to commit terrorist offences that prohibit incitement to violence or hatred and provocation to commit terrorist offences in audiovisual media services.** The rules will also apply to video-sharing platforms to protect people from incitement to violence or hatred and content constituting criminal offences. See section 3.
- **European works** in on-demand catalogues with at least 30% share of European content. See section 2.1
- **Strengthening provisions on the accessibility of media services.** Member States are now increasing the requirements for TV channels and ODPS under their jurisdictions to be accessible to persons with disabilities, which includes conveying any emergency announcements through audiovisual media services in an accessible manner. See sections 1.2, 2.3 and 2.5.
- **More flexibility in television advertising**. The revised rules give broadcasters more flexibility as to when ads can be shown – the overall limit of 20% of broadcasting time is maintained between 6:00 to 18:00. Instead of the current 12 minutes per hour, broadcasters can choose more freely when to show ads throughout the day. See section 1.1.
- **The optional country of destination levies.** The revised AVMSD rules now allow Member States to impose optional levies to incoming linear and ODPS from other Member States, which is primarily aimed at EU Member States with an existing national levy scheme. See sections 1.3 and 2.4.

The below table summarises the new regulations across the different formats. They are coded orange where not applicable (as there are no new regulations that apply), green where there is no additional impact and blue where the impact is analysed below (in some circumstances we still believe this to be close to 0).

Table 1: Summary of regulations

	Linear	ODPS	VSP
Country of Origin	N/A	N/A	New businesses in scope
Advertising	More liberal advertising minutage	Depiction of children consuming alcohol	Application of general advertising rules and responsibility with

			regards to product placement
Protection of minors and general public	N/A	N/A	Appropriate measures to be put in place
European works	Optional Levies	New provision of 30% Prominence Optional Levies	N/A
Accessibility	Emergency communications	Emergency communications Accessibility features	N/A
Other	Signal integrity, Media literacy	Signal integrity, Media Literacy	N/A

Section II: Assessment of impact

This IA breaks down the assessment of the expected impact according to the business type, namely (1) linear broadcasters, (2) ODPS and (3) video-sharing platforms.

At consultation stage, the department produced a De Minimis Assessment which set out all of the articles and a potential minimal impact on business. Following new evidence and engagement with stakeholders, particularly surrounding VSPs (including commissioned research) and European Works, the department felt it was necessary to complete a full regulatory impact assessment and have it validated by the Regulatory Policy Committee (RPC). The overall findings suggest an annual net direct impact on business of less than £10m. The regulation is a non-qualifying regulatory provision (NQRP) i.e. does not contribute to a business impact target (BIT), because it is a European Union regulation, and the UK is not gold-plating.

1. **Linear broadcasting**

1.1 Advertising minutage

The revision imposes a limit on advertising at no more than 20% viewing time between the hours 06:00 - 18:00. The same share is allowed between 18:00 - 24:00. Broadcasters would therefore have more flexibility to decide when to place advertisements as they will no longer have to strictly fall under a 12 minute cap per hour (as per the previous version of the Directive), as long as on average they meet less than 20% across in the time window. The aim is to enable broadcasters to maximise advertisers' demand and viewers' flow.

Current UK regulations are set at 9 minutes per hour for non-PSBs and 7 minutes per hour for PSBs and are therefore more stringent in two ways:

- The advertising minutage is lower than 20% (12 minutes) per hour;
- There is no flexibility for broadcasters to exceed this limit in any hour.

In 2011, Ofcom published an econometric research[10] paper which analysed the cost and benefits to broadcasters and concluded that raising the minute cap to 12 minutes would not be in the consumer's interest and would result in the reduction of overall revenues to broadcasters, however advertisers would likely benefit due to lower costs of advertising.

It is important to note that the revision of the AVSMD does not automatically lead into the relaxation of rules in the UK, as it is a minimum harmonisation directive and the rules set are the maximum permitted. As noted above, the UK currently applies a stricter level for advertising minutes than the directive permits. Any future decision to relax regulations to the AVMSD limits ultimately fall to Ofcom, who would have to conduct a market review and would be therefore subject to separate consultations and impact assessments beyond the scope of this IA.

Cost to business

Since the UK already satisfies the advertising provisions in the amending AVMSD, no additional costs to businesses are expected.

1.2 Accessibility of emergency communications

[10]Ofcom 2011, Regulating the quantity of advertising on television, https://www.ofcom.org.uk/__data/assets/pdf_file/0021/19083/advertising_minutage.pdf

The revised AVMSD provisions now require emergency communications to be accessible for viewers with visual or hearing impairments.

At the moment, emergency communication is domestically covered in the Communications Act 2003. Section 336 of the Act sets out that "*the Secretary of State may, at any time, by notice require OFCOM to direct the holders of the Broadcasting Act licences specified in the notice to refrain from including in their licensed services any matter, or description of matter, specified in the notice*."

However, if Ofcom apply the principle of proportionality for accessibility requirements when issuing such an instruction, only certain broadcasters who fall under scope will be required to make emergency announcements accessible. Furthermore, due to 'when practicable' requirement in the AVMSD, services could still convey an emergency announcement without making it accessible, for example if there were technical obstacles to prevent them to complying with Ofcom instructions.

The other revised provisions, designed to strengthen accessibility on TV channels and ODPS are currently already met by the UK.

<u>Cost to business</u>

This provision will not incur any additional cost to business, compared to the baseline, because infrastructure and processes are already in place to make their services accessible.

1.3 Linear levy scheme

The revised AVMSD rules will allow Member States to impose levies to incoming services from other Member States. This amendment is aimed primarily at EU Member States with an existing national levy scheme. The UK does not have such a scheme and therefore cannot impose cross-border levies on services without setting up a national levy scheme first. The UK argued against the introduction of this during the negotiations, because our analysis suggested that it would result in decreased inward investment on content from broadcasters. Any changes to policy would be subject to consultation and direction from Ofcom, however it will not be pursued within this secondary legislation. Therefore, this recommended option imposes no additional costs to business or regulators.

1.4 Overall costs for linear services

<u>Cost to business</u>

There are no quantified annual direct costs to business from the revised AVMSD measures relating to traditional linear broadcasting as per sections 1.1, 1.2 and 1.3. However, we do anticipate there to be additional familiarisation costs.

Familiarisation costs: There are approximately 72 linear broadcasters in the UK regulated by Ofcom.

- We anticipate that it will take a legal professional 1 day (8 hours) at a median hourly wage of £25.92 to read and understand the regulations and disseminate the information. This estimation is used as the most likely required profession for initial familiarisation, beyond which an employee in a senior management position may need to understand the implications for each organisation.

- As there are minimal implications for linear broadcasters, we adjust for the possibility that it will take a management professional a working day (8 hours) to assess the implications of the legislation and disseminate any information further, at a median hourly wage of £25.17.[11]

A greater level of comprehension or resultant training will unlikely be needed for the wider workforce as it does not affect day-to-day activity. Any decision taken at management level should be absorbed into business as usual work. These familiarisation costs have been benchmarked against previous verified impact assessments, with more conservative adjustments made to the labour-time cost than usual to ensure they are not being underestimated. Given the relatively limited number of organisations, the overall EANDCB is not sensitive to familiarisation costs. We then add 22% to these costs to account for overheads, in line with Eurostat figures.[12] This results in a total familiarisation cost to broadcasters of £36k.

Cost to regulator

We envisage there to be no set-up, administrative or monitoring costs to Ofcom in relation to linear services resulting from the newly introduced or amended provisions. These will be part of business as usual.

2. On-demand programme services

2.1 European works

2.1.1 European works ODPS 30% provision requirement

Under the current AVMSD (Directive 2010/13/EU), ODPS are encouraged to promote European works. Under the amending Directive, they are now subject to more specific obligations; they have to ensure that at least 30% share of their content is European works and they are required to give a good visibility (prominence) to European content (discussed in 2.1.2).

The European Commission published draft guidelines on how this could be imposed and exemptions applied. The quota is recommended to refer to 'titles' in a catalogue, rather than hours. This means either a series or a movie is classified as 1 title each. This is beneficial because the choices of users are centred around individual titles and their perceived quality/attractiveness; it is less burdensome to monitor and report for ODPS providers; it is easier to verify by regulatory authorities; and potentially avoids dumping many hours of low-quality material.

Exemptions will be based on low turnover, low audience share and based on certain thematic criteria (discussed below). Low turnover is recommended by the European Commission to be set at either 2 million Euros at a minimum, or 10 million Euros under more lenient circumstances. Audience share will be determined by the proportion of the population subscribed to or viewing a service as a proportion of the total population with broadband connection. This will range from 1% to 2% depending on how the member state's regulator chooses to administer it. This is a fairly novel method and there is no recognised metric across platforms for determining this, but Ofcom is working to develop a means of measuring this. In addition, thematic exemptions are applied where it is deemed unreasonable for the provider to alter their catalogue as they target a very specific and/or niche form of programming. However, the domestic regulators will decide how this

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[11] Annual Survey of Hours and Earnings

[12] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827926/RPC_short_guidance_note_-_Implementation_costs__August_2019.pdf

is implemented. For these reasons small and micro businesses will be exempt from the regulations as well as larger businesses under the thematic and audience share criteria.

ODPS providers already report data to Ofcom on catalogue size and number of European Works. Ultimately Ofcom will be designated the power to determine how the thresholds should be met, and which organisation will fall under the exemption criteria.

Impact on business

The main impact on business will result from the increased investment in UK content as ODPS providers meet the quotas. This should result in a direct benefit to business as more content is purchased in the UK rather than outside of Europe. The direct impact of this can be estimated using the best available data on company spend and content. Potential costs of the measure include the comparative profitability of redirecting spend into Europe and familiarisation costs.

As indicated by Channel 4 in their European Commission consultation response, we assume there will be no significant financial burden on providers already meeting the quota.[13] Analysis of data collected by Ofcom, for businesses who gave consent to use their data for the purposes of this Impact Assessment, shows the potential number of businesses not meeting the 30% quota in 2018. However, the number of businesses affected by the legislation is significantly limited by the multiple exemption criteria. Under the financial exemption: we apply the comparatively more stringent turnover exemption of approximately £2m in a worst-case cost scenario, as well as the more lenient turnover exemption of £10m in a best-case scenario. The number of financially exempt organisations may be greater if the turnover of a specific service is used instead of the turnover of the company owning that service, which is an implementation option for the regulator but not included in the analysis for feasibility issues.

For the audience exemption: reliable metrics of audience share are still being developed, however it is likely that several of the ODPS providers in scope will fall short of the 1% lower threshold. According to Ampere Analysis: Netflix[14], Amazon, Now TV, DisneyLife and Hayu are the only subscription video-on-demand platforms (SVODs) used by over 1% of homes (on top of the broadcaster VOD services, 'BVODs').[15] Any other services would be based on transactions (TVOD) or advertising (AVOD). This is even harder to measure because the services will often exist as part of a package within another platform (for example BBC iplayer on Sky-on-demand). With available data (from 2018) on the amount of hours selected ODPS service providers have on each platform,[16] we can see the size of services in scope as an indicative proxy. Taking a sample of 5 major UK platforms, we rule out any services with less than 0.2% share of hours in their catalogues collectively. We made the threshold for this proxy far smaller (10% of the above upper bound) to be cautious in case the demand for these services was significantly higher than the hours supplied.

We then factor in an additional provider being exempt under the thematic criteria, based on previous engagement with that stakeholder. Ofcom have made us aware of other organisations which fall under this criteria for reasons such as provision of news, however these organisations are likely to already meet the European works requirement. Any additional thematic exemptions to companies which are in-scope of the remaining criteria would reduce the cost to business of this measure.

[13] https://ec.europa.eu/digital-single-market/en/news/contributions-received-companies-avmsd-public-consultation

[14] not subject to UK regulation under the Country of Origin principle

[15] https://www.ofcom.org.uk/__data/assets/pdf_file/0026/149075/ampere-analysis-current-status-future-development.pdf

[16] for providers who gave consent to use of their data

Overall, we estimate there are between 4-5 organisations in scope. However, this is not intended to inform Ofcom or to be used for purposes outside this impact assessment.

Cost

Familiarisation costs: There are approximately 121 ODPS providers in the UK regulated by Ofcom.

- We anticipate that it will take a legal professional 1 day (8 hours) at a median hourly wage of £25.92 to read and understand the regulations and disseminate the information. This estimation is used as the most likely required profession for initial familiarisation, beyond which an employee in a senior management position may need to understand the implications for each organisation.
- As there are minimal implications for the majority of ODPS providers, we adjust for the possibility that it will take a management professional a working day (8 hours) to assess the implications of the legislation and disseminate any information further, at a median hourly wage of £25.17.[17]
- For the potential 5 organisations in scope, there could be further familiarisation of what the measures require. We assume it could take up to 4 weeks (20 working days) for a legal professional and management professional to understand the implications and clearly disseminate information, factoring this into the cost using the above figures.
- A greater level of comprehension or resultant training will unlikely be needed for the wider workforce as it does not affect day-to-day activity. Any decision taken at management level should be absorbed into business as usual work. However, we adjust for the time taken for the workforce to familiarise themselves with further disseminated information. Information collected on companies suggest the average size for these generally large media organisations is 240 employees. We estimate an additional hour of familiarisation for the remaining employees, for each potential organisation in scope, at the median hourly wage for an 'Arts, Entertainment and Recreation' employee (£13.43).[18]

These familiarisation costs have been benchmarked against previous verified impact assessments, with more conservative adjustments made to the labour-time cost than usual to ensure they are not being underestimated. Given the relatively limited number of organisations, the overall EANDCB is not sensitive to familiarisation costs. We then add 22% to these costs to account for overheads, in line with Eurostat figures.[19] This results in a total familiarisation cost to ODPS providers of £130k.

Businesses already report European Works to Ofcom, therefore we assume any additional monitoring and reporting costs to be negligible.

Regarding the calculation of annual costs, we envisage several ways in which a provider could fulfill the 30% quota. They could:

a) increase the amount of European works in their catalogue, whilst maintaining the current level of non-European content;

b) decrease the amount of non-European content in their catalogue without investing in European works; or

c) replace non-European content in their catalogue with European works to meet the gap, maintaining overall library size.

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[17] Annual Survey of Hours and Earnings

[18] Annual Survey of Hours and Earnings

[19] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827926/RPC_short_guidance_note_-_Implementation_costs__August_2019.pdf

Under (a), the business would incur the highest commissioning/acquisition costs but maintain their original catalogue. Under (b), there would be no additional production costs and perhaps some future cost savings. However, Ofcom figures show that this would involve reducing a large majority of their library size (45% on average) in most cases. This would likely incur large risks to their business models and profitability, making the option unviable.

Scenario (c) is a reasonable compromise between the two, where a far smaller percentage of non-European content (14% on average) can be replaced with European works at a lower cost to scenario (a). As stakeholders have suggested some effect on current budgets, we expect some variant of scenario (c) to be most realistic, but keep it defined as above for simplicity. By using this scenario, we assume that unpopular content is removed and budgets are partially diverted from new non-European content, which is more cautious to scenario (a) in terms of assuming available budget.

The European Commission IA[20] on updating the AVMSD, which at the time was assessing a 20% EW minimum, asserted the following: “The cost of complying with the 20% share is deemed to be limited as on-demand services business models are based on revenue sharing”. This implies that the model used by ODPS platforms means they do not directly incur acquisitional costs, but receive additional revenue for the new European content. In addition, as suggested by Viacom in their response to the European Commission consultation, some non-linear services are already subject to European quotas on their linear format, implying they may already hold a greater volume of European works (as the quota for linear TV is 50%). We can’t safely assume these assertions would hold across all ODPS providers, with emerging competitors diverging from traditional models and complications involving how to apportion revenue to the transactions realised.[21] We take a more conservative approach to the European Commission and assume, in a best-case scenario, that costs are matched by revenue and no additional profit is made compared with the baseline.

However, research into the effects of previous content quotas on linear television suggest that a potential financial burden on ODPS providers should be considered. Previous quotas on European Works (in linear broadcasting) are reported to have led to either a premium being placed on European content, or a fall in viewing figures due to cheap quota-filling content, in specific cases.[22] Discovery noted in their consultation response to the European Commission that they have previously incurred costs to source local content and adapt it. One European commercial broadcaster noted that they would face profitability issues to meet a quota, whilst another suggested that companies would invest in content which gains lower audience shares.[23] Effects are likely to vary across formats, as they already do between countries and business structures.Some of the larger ODPS providers within the UK may be more resilient than companies from smaller production industries, which are clearly hindered the most.[24]

For these reasons, the cost to ODPS providers is modelled as a loss in profit. Switching to European content may reduce revenues if it is less popular, or it could also cost more to buy higher-value European content to maintain revenues. As stated above, we expect ODPS providers will divert money that would have otherwise been spent on non-European content. This means that the net cost, compared to the baseline, is the comparative profitability of European content, rather than the total cost of these purchases.

[20] https://ec.europa.eu/digital-single-market/en/news/impact-assessment-accompanying-proposal-updated-audiovisual-media-services-directive

[21] https://ec.europa.eu/futurium/en/system/files/ged/analysisofthelegalrulesforexploitationwindows.pdf

[22] https://www.fieldfisher.com/en/insights/eu-audiovisual-media-services-directive

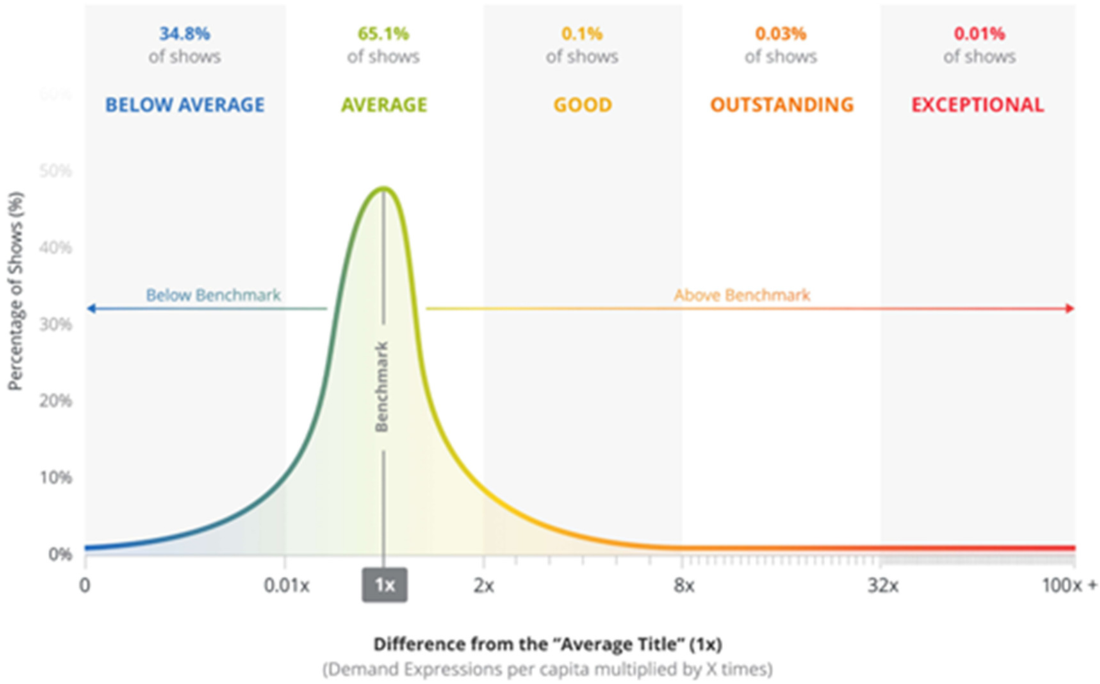
[23] https://ec.europa.eu/digital-single-market/en/news/contributions-received-companies-avmsd-public-consultation

[24] http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.923.4383&rep=rep1&type=pdf

It should be noted that in neither the European Commission consultation, nor the DCMS consultation on the revised AVMSD, did any provider give an estimated cost of adhering to new quotas on European works. A range of responses (several of which are listed above) ranged from opinions on quotas benefitting inward investment, competition and culture, to dampening innovation, and resulting in perverse incentives to purchase cheaper content. These responses acted as a guide for how the market could react, which helped form the data-driven estimates below.

To get a sense of the magnitude of this impact and form a realistic range of estimates, we consider the size of the required change as a proportion of total library size, and weigh this up against a list of mitigating factors. As stated above, the average size required to be changed is 14% for the firms believed to be in scope. As also stated above, we do not expect the most popular non-European content to be removed or cease to be funded. There is little data available on the amount of revenue attributed to the priority shows. Internal DCMS analysis of BARB data suggested that, for a given week, approximately 14% of the highest viewed shows across the 5 public service broadcasters (PSBs) received 53% of viewing figures across their main channels. This implies that the remaining 86% of shows gained only 47% of viewing figures. Whilst this is just for linear broadcasting, it illustrates the relative demand pull of the most popular shows. For digital formats, where ODPS content originates, we can see the skew in demand towards the most popular shows. The below figure demonstrates that the top 0.01% of digital shows in the UK in 2018 received between 32x to over 100x the average demand. Whereas a large proportion of below average shows (34.8%) received less than 0.01x the average demand.

Figure 1: UK TV Content Demand Distribution Curve (2018)



Parrot Analytics (2019)[25]

For advertising and subscription formats, this should have a direct relationship with revenue earned. This is particularly demonstrable for advertising-based television where revenues have a clear correlation with viewing figures.[26] Therefore, removing the most popular content should have a more than proportional impact on profits, relative to the size of the catalogue they make up. Resultantly, removing less popular content should have a less than proportional impact. So we

[25] https://www.parrotanalytics.com/insights/the-most-popular-digital-tv-series-in-the-united-kingdom-in-2018/
[26] http://www.socsc.ktu.lt/index.php/Social/article/view/8410

suspect that the impact of replacing less popular content (i.e. % fall in profit) should not be significantly higher than the proportion of catalogue replaced, and could be lower.

More European content will be purchased to ensure the 30% quota. The overall loss on profits could be limited by the following factors:

- less popular content being replaced,
- the library size being maintained,
- the use of revenue sharing models,
- pre-existing holdings of European works and,
- the potential for some European content to be equally or more profitable

Due to these factors, it is realistic that the fall in profit could be smaller than the proportion of catalogue replaced, i.e. less than 30%. We calculate current profits from company accounts, and then model a wide sensitivity on the profit lost using the below assumption.

Between 1%-30% of ODPS provider profit would be lost on the forgone non-European content. We model the cost to be relative to the size of each company's requirements. In a worst case scenario, we assume this equals the size of the library replaced. Theoretically, this could vary from 1% to 30%, but this averages 14%. In the lower bound, we assume that 20% of this cost is incurred (i.e. a potential loss to a company of up to 6% [30%*20%]) to account for the mitigating factors. The central estimate is taken as the mid-point between these. This wide sensitivity accounts for a range of uncertain factors, but still represents a significant overall cost.

This is taken as a direct cost to business, though there is potential for it to result in an indirect net transfer across the UK economy. For example, if an ODPS provider loses viewers and resultant profit, this impact may be absorbed elsewhere in the entertainment market. For example, a consumer could switch subscriptions to an alternative platform or purchase more substitutes such as cinema tickets, linear Pay-TV or home video.

We model scenarios where the regulations are required to be met within 4 years (lenient) and 2 years (strict), which forms a likely transition period. This is based on how Ofcom has implemented other measures. This could mean that the requirements do not need to be met until the end of this period, but for the calculations, we model that an equal proportion of the requirements are addressed each year. We account for the average growth of the ODPS market based on projections from Ampere Analysis, which, accounting for new subscriptions, averages c.14% until 2023.[27] We take the current proportion of spend to revenue across our sample and apply this, along with the above, to continue the trend through the appraisal period. For the final figures, we compare scenarios where the strict and lenient exemptions are applied.

Table 2: Average annual cost to ODPS providers

Variable	Central Estimate (before discounting)
Profit earned by in-scope organisations	£306.4m
Proportion of profit lost	5.9%
Potential profit lost	£18.2m
Adjustment for transition period (lenient)	£14.1m

[27] https://www.ofcom.org.uk/__data/assets/pdf_file/0026/149075/ampere-analysis-current-status-future-development.pdf

Benefit

There will be a benefit to UK production companies, who will have more content purchased from ODPS providers. We consider the investment in UK productions by ODPS providers as a direct benefit, as opposed to indirect. This is because we have treated the possibility of ODPS providers purely decreasing their catalogues as unviable due to the unrealistic scale of reduction this would require (discussed above); so the benefit to business from increased purchases will take effect along with the additional cost to business described above.

The amount of hours purchased from UK producers to meet the requirements can be estimated from data provided to Ofcom. We take a reasonable central estimate of mid-cost entertainment of £265,000 per hour from the BBC tariff structure.[28] This should prevent overestimation of the benefits to UK content producers as there are no requirements in the directive to produce high-end TV (>1m per hour), and previous evidence suggests quotas may be filled with below average content costs. This shows the initial spend diverted to European content to meet the requirements over a transitionary period. Future spend on European content will then be based on 30% of the current level of expenditure (taken from company accounts), adjusting for the proportion of costs spent on television production compared with other activities (where available). We then make the following assumptions to give indicative estimates of a gain in profit to UK producers:

- 85% (central estimate) of European works investment by UK-based ODPS providers is spent in the UK. This assumption accounts for the fact that not all purchases of European content (by UK-based ODPS providers) will be from the UK, though data suggests the majority will be. European Commission (2011) figures suggest that c.93% of UK programme expenditure is spent domestically.[29] Whilst this estimation uses old data, 2017 figures show the proportion of external productions hasn't changed.[30] In addition, World Input-Output Data (WIOD) gives us estimates of the UK share of the domestic audio-visual market (i.e. the proportion of the UK audiovisual market which is made up of UK goods and services), which averages 85% between 2010-2014.[31] Whilst this evidence is still limited, it is the most relevant available data. Both of these variables (which show companies' relative expenditure in domestic markets) are appropriate proxies for the taste in UK content, with respect to non-UK content. To attract audiences, ODPS providers source content in line with the tastes of the country in which it is selling. A European Commission report found that the ODPS market is highly segmented on a national basis, as favoured by producers. Whilst Netflix releases many titles globally, it still adapts its catalogue to regional consumer tastes.[32] Given these proxies are similar, it would be realistic to estimate the true value is a high percentage of total spend. We estimate 85% as the central estimate and include a range of negatively weighted sensitivity to be conservitive. 90% is taken as the upper estimate, and 70% is taken as the lower bound.
- 70% (central estimate) of UK production revenue is earned by the UK co-producer. European Commission guidelines state that a title can be defined as European content "provided that the Union co-producers supply a majority share of the production costs". Accounting for the potential for ODPS providers to take advantage of this criteria and continue to commission non-UK companies as co-producers, we adjust for the fact that the UK producers will only receive a majority share of production revenue. Whilst this is very uncertain, it technically must fall between 50% and 100%, and we can compare to similar trends. Data from the Audiovisual Observatory shows that 71% of films produced

28 http://downloads.bbc.co.uk/commissioning/site/tariff_prices_for_independents.pdf
29 https://ec.europa.eu/digital-single-market/en/news/study-promotion-european-works
30 https://www.ofcom.org.uk/__data/assets/pdf_file/0017/130706/Oliver-and-Ohlbaum-regionality-trends-within-the-UK-production-sector.pdf
31 http://www.wiod.org/database/wiots16
32 https://ec.europa.eu/jrc/sites/jrcsh/files/JRC98020.pdf

in the UK were entirely domestic productions, whilst 12% were co-productions and 17% were foreign investment. For UK TV fiction productions, 90% were entirely domestic, whilst 7% were majority co-productions, and just 4% were minority co-productions.[33] This suggests that the 70% assumption is probably a conservative estimate. However, given the uncertainty in how ODPS providers will adjust content which is currently non-European, we take a wide degree of sensitivity. We assume 55% as the minimum average UK share (practically the smallest feasible share) and 85% as the maximum.

- 7% profit for content producers. This is taken from Deloitte's 2017 report on 'Media Metrics', where they analyse published company accounts to obtain a sub-sector average for 'TV production and distribution' companies.[34] In previous verified impact assessments, the department has used the UK-wide average for operating surplus (which was 31.9% in 2016)[35] when assessing the impact of a measure in GVA terms. Using profit is a more restrictive measure as GVA includes wages amongst other factors. According to Regulatory Policy Committee (RPC) guidance, if wages are considered a 'pass-through', then their cost is indirect, making GVA an appropriate measure of the direct benefit to business.[36] Therefore, using this metric could be underestimating the direct benefits.

The benefit to UK production companies over the transition period is based on the amount of hours required by UK ODPS providers to meet the quota, multiplied by the average production cost per hour and the proceeding three assumptions. Afterwards it is based on 30% of the companies' current spend as less European works will be required (and will instead depend on how much additional non-European works they produce). This removes the cost-per-hour assumption from the calculations, and instead uses company accounts as described above. Using this adjustment for future years has a dampening effect on the estimated benefits. We model scenarios where the regulations are required to be met within 4 years (lenient) and 2 years (strict), which form the potential transition period. We account for the average growth of the ODPS market based on projections from Ampere Analysis, which, accounting for new subscriptions, averages c.14% until 2023.[37] We take the current proportion of spend to revenue across our sample and apply this, along with the above, to continue the trend through the appraisal period. For the final figures, we compare scenarios where the strict and lenient exemptions are applied.

There will also be a positive impact on UK-producers from *non-UK based* ODPS providers. At the end of 2017, 27% of EU28 ODPS catalogues were established in the UK, meaning the market subject to the regulations is much larger and should lead to more purchases of UK content.[38] Providers from low-producing countries will need to import quality European Works in particular. Such benefits to UK business could be extrapolated, but data isn't available from other countries on businesses in scope and many additional assumptions would be required. As UK titles should make up a smaller proportion of European catalogues on average,[39] this impact could be somewhat limited. However, it is likely that we have underestimated the overall benefit to UK businesses.

Table 3: Average annual benefit to UK producers

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33 https://rm.coe.int/brexit-in-context/16808b868c

34 https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/technology-media-telecommunications/deloitte-uk-media-metrics-2017.pdf

35 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/695123/Universal_Service_Obligation_-_final_IA.pdf

36 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/790024/RPC_case_histories___other_BIT_specific_issues__March_2019.pdf

37 https://www.ofcom.org.uk/__data/assets/pdf_file/0026/149075/ampere-analysis-current-status-future-development.pdf

38 https://rm.coe.int/brexit-in-context/16808b868c

39 https://ec.europa.eu/archives/information_society/avpolicy/docs/library/studies/art_13/final_report_20111214.pdf (table 52, broadcasting comparison)

Variable	Central Estimate (before discounting)
Potential spend diverted to European works	£203.5m
Adjustment for 85% of spend on European works by UK ODPS providers being spent in UK	£172.9m
Adjustment for 70% of domestic production revenue earned by UK companies	£121.1m
Adjustment for 7% operating surplus	£8.5m
Adjustment for transition period (lenient)	£4.0m

EANDCB

Under a scenario of lenient exemptions, we calculate the central estimate to have an equivalent annual net direct cost to business (EANDCB) of **£9.3m**, with a worst-case scenario of **£19.6m** and a best-case scenario of **-£0.7m** (2018 prices, 2020 present value base year)[40]. These are included in the headline figures as the more likely scenario.

Under a scenario of strict exemptions, we calculate the central estimate to have an equivalent annual net direct cost to business (EANDCB) of **£10.4m**, with a worst-case scenario of **£23.6m** and a best-case scenario of **-£2.4m**. However, in order to not overestimate the benefits by using what we deem to be less realistic results, these figures are not included in the headline pages.

These figures are a best estimate under a high degree of uncertainty, with the assumptions applied in order to show the scale of the direct impacts. Given the central net direct impact on business is less than £10m and a small number of businesses are negatively affected, we have applied the principle of proportionality in line with Regulatory Policy Committee (RPC) guidelines.[41]

Indirect and wider impacts: There are potential further impacts to UK businesses, government and people not captured above. This includes:

- Spend by production companies on equipment and services. This is indirect for many reasons such as existing company stock, ability to acquire internationally etc. In terms of employment, we have assumed near 100% displacement given the uncertainty and lack of evidence to prove otherwise, in line with the Green Book.
- Government revenue from taxes. Using information from the organisations' accounts (as above), there is on average a 14% tax on profit paid. Extrapolating this with the above calculated increase in profit gives us an estimate of government revenue increasing by £0.5m-£1.5m a year. This is considered an indirect impact and is not factored into the NPV as it is a direct transfer.
- The intervention could enhance competition. As argued by the European Commission, the European works quota will bring a greater level of diversity to the growing on-demand sub-sector. This means that consumers should benefit from an increase in choice of source

[40] The headline EANDCB is in 2016 prices, 2017 present value base year for consistency with other impact assessments

[41] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800603/Final_proportionality_.pdf

for their programming. European works have also been argued to enhance social benefits such as pluralism, social cohesion and support for European values.[42]

- There could be spillover benefits to the UK creative economy through increased investment in the industry. There is evidence of this occurring in similar interventions through upskilling, knowledge sharing and strengthening cross-border collaborations.[43]
- If the quota results in the cost for European content increasing, this may be passed onto consumers. The fall in consumer surplus would result in a deadweight loss to society. As this regulation will only apply to a small subsection of the market, with approximately 97% of ODPS providers either already compliant or exempted, we do not factor-in significant effects on price.

2.1.2 European works prominence requirement

Prominence refers to promoting European Works through facilitating access to such works. The AVMSD outlines the ways for ODPS providers to ensure prominence, including:

- a dedicated section for European works that is accessible from the on-demand audiovisual media service homepage;
- or the possibility to search for European works in the search tool available as part of that service;
- or the use of European works in campaigns of that service;
- or a minimum percentage of European works promoted in the catalogue, e.g. for example by using banners or similar tools.

The revised provision will require ODPS providers to report the promotion of European works and its prominence to Ofcom.

Cost to business

Familiarisation costs are assumed to be captured by the calculations in 2.1.1.

It is difficult to monetise the annual costs of giving prominence to European works, given the flexibility in the regulations. As suggested by the Motion Pictures Association at consultation, 'regulators have considerable flexibility to determine the most appropriate way to comply with this regulation' and should therefore take into account the varying business models in a way which prevents 'dampening innovation'. PACT indicated at consultation that 'Because of the popularity of British content, it is often already in a prominent position and easy to find on SVODs', which suggests that prominence may be more scarce for countries with a smaller production industry. Discovery indicated in their response to the European Commission's consultation that adhering to the regulation would involve administering software with someone employed to understand and monitor the software. We factor in a minimum impact on staff costs of an additional full-time employee (technology professional median annual wage is £30,500[44]) per business to develop and ensure prominence is maintained. The full-time annual wage is applied every year, adding £0.2m to the headline EANDCB.

2.2 Depiction of children consuming alcohol in advertisements

[42] https://ec.europa.eu/digital-single-market/en/news/contributions-received-companies-avmsd-public-consultation (NORDICPSB)
[43] https://www.artscouncil.org.uk/sites/default/files/Cultural_creative_spillovers_in_Europe_full_report.pdf
[44] Annual survey of hours and earnings (ASHE)

The revised rules around the depiction of children consuming alcohol in advertisements have been extended from linear services to ODPS to ensure consistency in regulatory burdens across audiovisual service providers.

Cost to business

The cost of this extension to businesses is estimated to be zero as there is no evidence that this practice currently occurs on UK ODPS, and is already restricted by self-regulatory rules.

2.3 ODPS Accessibility

Whilst the 2010 Directive only called upon Member States to encourage media service providers in their country to ensure that their services are gradually made accessible to people who are deaf, hard of hearing, blind or partially sighted, it did not create any obligations. Under the updated Directive, these measures have become an obligation on Member States.

The Digital Economy Act 2017 gave additional powers to the Secretary of State to put in place specific accessibility obligations for ODPS platforms which we have already been preparing to implement through secondary legislation. This power includes the requirement for Ofcom to conduct a consultation and publish a report on the accessibility of on-demand programme services (AODPS). Ofcom's initial report[45] recommends a 2-year interim target of 40% subtitled content to allow time for platform infrastructure establishment and a 4 year target of 80% to allow time for providers to work through any inaccessible archive content. This complements AVMSD requirements "that services provided by media service providers under their jurisdiction are made continuously and progressively more accessible to persons with disabilities through proportionate measures" (Article 7(1)).

We are working closely with Ofcom to ensure that the interim targets would align with minimum standards set out by the AVMSD. Therefore, we do not expect new AVMSD obligations to incur any additional costs for businesses above and beyond already planned domestic legislation. A full impact assessment is being prepared for AODPS domestic legislation, based on recommendations from Ofcom (once finalised), which will contain details on the breakdown of the costs to business.

2.4 ODPS levy scheme

Similar to the proposal described under section 1.3, the revised AVMSD rules will allow Member States to impose levies to incoming services from other Member States. This amendment is aimed primarily at EU Member States with an existing national levy scheme. The UK does not have such a scheme and therefore cannot impose cross-border levies on services (of which 33 have been identified) without setting up a national levy scheme first. The UK argued against the introduction of this during the negotiations, because our analysis suggested that it would result in decreased inward investment on content from broadcasters. Any changes to policy would be subject to consultation and direction from Ofcom, however it will not be pursued within this secondary legislation. Therefore, this recommended option imposes no additional costs to business or regulators.

2.5 Emergency communications

[45] https://www.ofcom.org.uk/__data/assets/pdf_file/0014/131063/Statement-Making-on-demand-services-accessible.pdf

New provisions are designed to ensure that emergency announcements are broadcast in an accessible manner, as described in section 1.2.

Since the Directive takes a technology neutral approach, we expect to transpose the provision on emergency communications, thus applying the measures to linear as well as ODPS.

Cost to business

Regardless of Ofcom's interpretation of this provision, **we do not expect this provision would generate any significant costs for businesses.** Due to the 'when practicable' requirement in the AVMSD, these services could still convey emergency announcements without making them accessible, if there were technical obstacles to prevent them complying with Ofcom instructions.

3. Video-sharing platforms

In the updated Directive, the scope of application has been extended to also cover video-sharing platforms (VSPs), that is, platforms which facilitate the sharing of user-generated content such as Youtube.

The rules which will now apply to these platforms include:

- Protection of minors from harmful content (which may impair the physical, mental or moral development) and protection of the general public from incitement to violence or hatred and content constituting criminal offences (public provocation to commit terrorist offences, child pornography and racism or xenophobia).
- Obligations pertaining to commercial communications, including new rules around the transparency of advertising, social harm and the advertising of certain restricted products . VSPs will also have to take appropriate measures to help ensure that advertising contained within content over which they have no directcontrol complies with these rules. Whilst advertisers on video-sharing platforms are already required to comply with most rules in the amending AVMSD on commercial communications on a self-regulatory basis through the CAP Code, the rules are now underpinned by legislation and enforced through co-regulation.

The measures listed in the Directive that Member States will need to put in place to achieve these obligations complement the e-Commerce Directive[46] and aligns with the proposals in the Online Harms White Paper, published by the government in April 2019. This includes flagging and reporting mechanisms, age verification systems, systems to rate the content by the uploaders or users and parental control systems.

To address a gap in information surrounding VSPs, DCMS commissioned research from Plum Consulting.[47] The report had the objectives of identifying the number of VSPs under UK jurisdiction, measuring the size and scope of these companies and describing the extent to which they were compliant with the updated AVMSD. They identified VSPs through the European Commission definitions including having a service providing programmes or user-generated videos which the VSP does not have editorial responsibility over. The research excluded organisations with a video reach of less than 0.5% of internet users in the UK or 1 million streams per service per month.

Whilst the research cannot predetermine how a regulator may make scope decisions about a VSP, it does provide an indicative basis. The results identified six mainstream VSPs which meet

[46] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')

[47] https://www.gov.uk/government/publications/report-on-video-sharing-platforms

those size criteria, which are, or could potentially be, under UK jurisdiction. In addition, there are at least two adult VSPs which appear to be under UK jurisdiction. Of the long list of services providing video content, the vast majority have editorial responsibility for this content and are not VSPs. The size and scope of the VSPs vary enormously. Snapchat (found to be a borderline case) had the widest monthly reach – 23.1 million or 54% of the total UK audience based on mobile internet usage. The rest of the VSPs have substantially smaller audiences. In addition, the VSPs were partially compliant with the new AVMSD across a range of factors.

Implementation

The Video Sharing Platforms (VSP) requirements of the Directive align strongly with the objectives and approach outlined in the Online Harms White Paper, published in April 2019, and the subsequent initial Government response, published in February 2020.

Our preferred approach was to give effect to the VSP requirements through the legislation implementing the White Paper, but this legislation will not be passed ahead of the deadline for transposition. As a result, this statutory instrument (SI) will be an interim approach ahead of the Online Harms regulatory framework coming into force.

The Government's Video Sharing Platforms consultation response confirmed the government's approach to implementation of the VSP provisions - namely appointing Ofcom as the regulator for VSPs, adhering to the minimum standards of the Directive, and replicating existing regulatory arrangements for video-on demand services as much as possible.

Once legislation implementing the Online Harms legislation is brought forward, these interim provisions are likely to be repealed. Full details of the Online Harms Framework will be set out in the full government response.

This table gives further analysis of the crossover between the AVMSD and the Online Harms White Paper proposals.

Table 4: Comparison of AVMSD and Online Harms White Paper

Article	Summary of AVMSD provision	Online Harms White Paper
	Article 1	
1(b)(aa)	Definition of 'video sharing platform' introduced	The proposed scope of the White Paper (sites that host or index user-generated content, or facilitate communication between users) is broader than the definition of 'video sharing platforms.' Most video sharing platforms will be captured under the OH framework given the criteria concerning UGC.
1(c)(b)	Definition of 'programme'	This is a supplementary definition to further define what constitutes a VSP and will not be needed once VSPs are captured under the new regulatory framework.
1(d)(ba)	Definition of 'user generated video' introduced	Again a supplementary definition that will not be required once the broader scope of the White Paper regulatory framework is defined in law.
1(e)(da)	Definition of 'video sharing platform provider' introduced	Again a supplementary definition that is unlikely to be required once the broader scope of the White Paper regulatory framework is defined in law.
	Article 28a	
1	Asserts primacy of where VSPs are already	

	established as an 'Information Society Service' (ISS) under the eCD as determining their jurisdiction under AVMSD	These jurisdiction provisions are designed to give effect to the EU's country of origin principle and thus will not be a part of the Online Harms framework.
2	Establishes other determinants for determining jurisdiction should a VSP not already be established as an ISS	
3	Establishes a hierarchy for these determinants should a VSP have more than one qualifying feature	
4	Establishes determining factor for jurisdiction should there be undertakings of the same type in several member states to be the earliest undertaking	
5	Article 3 (internal market / country of origin) and Articles 12 to 15 (limited liability of intermediary service providers) of the eCD shall apply to VSPs	
6	Member States are required to maintain list of VSPs in their jurisdiction and to communicate this to the Commission	
7	Procedure of dealing with Member State disagreements over jurisdiction	
Article 28b		
1	Core requirements of VSPs to protect minors and the general public	The White Paper sets out a programme of action to tackle content or activity that harms individual users, particularly children, or threatens our way of life in the UK, either by undermining national security, or by undermining our shared rights, responsibilities and opportunities to foster integration. The Online Harms proposals should sufficiently cover and are likely to even go further than the AVMSD requirements.
3	List of appropriate measures to be used by VSPs, in light of the nature of content, harm it may cause, characteristics of users as well as legitimate rights and interests	Per the White Paper, the government will establish a new statutory duty of care to make companies take more responsibility for the safety of their users and tackle harm caused by content or activity on their services. Compliance with this duty of care will be overseen and enforced by an independent regulator and the regulator will set out how to do this in *Codes of Practice.*
4	Encourages the use of co-regulation in implementing the requirements for VSPs	Co-regulation does not form part of the proposed regulatory regime set out in the OHWP and amplified in the initial government response to the public consultation, though nor is it ruled out. Further details of the proposed regime will be provided in the full government response and draft legislation to be published in due course.
5	Member States are required to establish a mechanism to assess the appropriateness of measures, and shall entrust this to national regulatory authorities	The White Paper outlined that compliance with this duty of care will be overseen and enforced by an independent regulator. All companies in scope of the regulatory framework will need to be able to show that they are fulfilling their duty of care. The regulator will have a suite of powers to take effective enforcement action against companies that have breached their statutory duty of care.

		This should sufficiently cover the requirements in AVMSD.
6	Member States are able to implement stricter measures on VSPs (so long as these are compliant with the limited liability provisions in the eCD)	N/A
7	Member States are to provide an out of court redress mechanism to settle disputes between users and VSPs	The White Paper states that as part of the new duty of care, we will expect companies, where appropriate, to have effective and easy-to-access user complaints functions, which will be overseen by the regulator. Companies will need to respond to users' complaints within an appropriate timeframe and to take action consistent with the expectations set out in the regulatory framework.
8	Member States are to ensure that users can still assert their rights before the courts	The White Paper confirmed the importance of an independent review mechanism to ensure that users have confidence that their concerns are being treated fairly. Further details will be made clear in the full government response.

Costs to business

We expect there to be familiarisation, transition, annual and monitoring and reporting costs. Though, as stated above, it is not yet clear how this aspect of the legislation will be enforced. We draw on the most comparable evidence from related impact assessments and international comparisons to inform the calculations.

Familiarisation costs: The research by Plum Consulting, commissioned by DCMS (described above) identified **8 potential VSPs** in scope of these new regulations.

- We anticipate that it could take up to 4 weeks (20 working days) for a legal professional (at a median hourly wage of £25.92) and management professional (at a median hourly wage of £25.17) to understand the implications and clearly disseminate information.
- A greater level of comprehension or resultant training will unlikely be needed for the wider workforce as it does not affect day-to-day activity of existing staff. The potential for new staff to be hired specifically to address these regulations is comprehensively accounted for below. However, we adjust for the time taken for the workforce to familiarise themselves with further disseminated information. DCMS commissioned research from Plum Consulting (detailed above) found that there were approximately 6,500 employees across the identified VSPs. We estimate an additional hour of familiarisation for the remaining employees, for each potential organisation in scope, at the median hourly wage for an 'Arts, Entertainment and Recreation' employee (£13.43).[48]

These familiarisation costs have been benchmarked against previous verified impact assessments, with more conservative adjustments made to the labour-time cost than usual to ensure they are not being underestimated. Given the relatively limited number of organisations, the overall EANDCB is not sensitive to familiarisation costs. We then add 22% to these costs to account for overheads, in line with Eurostat figures.[49] This results in a total familiarisation cost to VSPs of £186k.

[48] Annual Survey of Hours and Earnings

[49] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827926/RPC_short_guidance_note_-_Implementation_costs__August_2019.pdf

Transition and annual costs

The impact of these regulations on VSPs is dependent on how Ofcom enforces them. As stated above, HMG is adhering to the minimum standards of the Directive. The European Commission outlined a list of potential measures a regulatory body could take to adhere to the new AVMSD requirements, however, it is not compulsory for any of them to be adopted. These suggestions included: having terms and conditions; declarations for video-sharing; flagging mechanisms; parental controls; complaints processes; media literacy tools as well as age verification systems. This impact assessment models a scenario beyond the minimum requirements to give an illustrative representation of some of these costs as an upper bound. The possibility of few of these measures being implemented is taken as the lower bound.

Transition costs: In a maximalist scenario, VSPs may be required to set up additional software (such as age verification, parental controls or a user-generated rating system), the cost of which should be predominantly incurred in the initial year(s) of compliance. As stated in the Age Verification for pornographic material online IA,[50] set-up costs for Internet Service Providers (ISPs) was estimated in the range of £100-£500k. Similarly, the European Commission estimates that a user-generated rating system would cost EUR 100k per business.[51] We take sensitivity on these figures with £500k as the upper bound, £0 as the lower bound and £250k as the central estimate for each of the 8 businesses potentially in scope. We therefore estimate a total set-up cost of £2m (central estimate).

Annual costs: Plum Consulting (research commissioned by DCMS, detailed above) conducted a high level assessment of compliance with the above listed example measures for the organisations in scope, however these findings are confidential and will not inform or impede the ultimate decisions taken by Ofcom. For estimation purposes the partial or full compliance of an organisation will form the baseline (i.e. the extent to which the businesses would address these issues in the absence of regulation), by ranking each organisation out of 100% compliance.

To comply with some of the additional measures, such as flagging and complaints by users, we factor in the possibility for additional staff to be employed to monitor the platforms. Facebook, as a comparator not under UK jurisdiction, is one of the largest video-sharing platforms globally and has large measures in place for monitoring activity and content. Including outsourced staff, Facebook has been estimated to employ 15,000 content moderators at an average wage of £12,000.[52] We estimate that each VSP in scope will need to employ regular moderators in proportion to their size (measured by turnover) compared with Facebook. This estimation makes no judgement on whether Facebook is currently compliant with the revised AVMSD, nor that these organisations necessarily would be by employing these staff. Rather, it shows a reasonable estimate of the required scale. We then adjust for the baseline compliance of each firm with the suggested measures. We then add 22% to these costs to account for overheads, in line with Eurostat figures, which accounts for other variable capital including additional computer systems.[53] These costs could be considered in the upper bound of estimates for the likely requirements under the interim period. However, as some additional form of monitoring is the most likely requirement of the regulations, we keep this constant across the central and lower bound scenarios.

We also account for potential fees paid to the regulator over this period. Whilst this structure has not yet been confirmed, we use the ODPS fee structure for comparison.This indicates a fee of

[50] https://www.legislation.gov.uk/ukia/2019/12/pdfs/ukia_20190012_en.pdf

[51] https://ec.europa.eu/digital-single-market/en/news/impact-assessment-accompanying-proposal-updated-audiovisual-media-services-directive

[52] https://www.statista.com/chart/17302/facebook-content-moderator/

[53] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827926/RPC_short_guidance_note_-_Implementation_costs__August_2019.pdf

£4k per year for the larger VSPs identified by Plum Consulting.[54] It is expected that this will have to be paid under all scenarios.

We display the full annual cost over the full 10 year appraisal period below, but only factor in this cost over the first 5 years in the headline figures as the VSP regulation is likely to become part of the wider Online Harms regulatory framework. This is to avoid double counting. We also factor in a 2-year period for VSPs to be compliant, approximating that costs will be half of the total in year 1. This results in an equivalent annual direct cost to business (EANDCB) of **£2.9m (10 years)** (2018 prices, 2020 present value base year)[55]**.** This is very comparable to the European Commission estimate that it would cost EUR 3.1m per year to moderate a 'major' VSP.[56] Whilst there are at least 8 in-scope UK VSPs, when compared with a major VSP like Facebook, their combined turnover is far lower and approximately a quarter of their user-generated videos are publically available, making this comparison reasonable.

Additional administrative costs are accounted for by the adjustment for overheads which add over £600k to the annual costs. We were not able to monetise the impact of all of the potential measures, such as introducing terms and conditions, under resource constraints. The measures accounted for represent significant additional costs which may go beyond the minimal requirements of this directive, as is being transposed. Given the headline EANDCB is still less than £10m and a small number of businesses are negatively affected, we have applied the principle of proportionality in line with Regulatory Policy Committee (RPC) guidelines.[57] The Online Harms white paper also proposed that the regulator should draft and publish Code of Practices to help companies with compliance. Whilst this may not be a direct requirement for the interim regulator, we set out additional costs for the regulator below.

Monitoring and Reporting costs: Using the European Commission IAs estimate that ODPS providers spend 12 hours a year compiling and reporting data to a regulator, and the median wage of a business analyst (£20.64), to estimate an additional annual cost of c.£2k. It was not possible from Ofcom to provide an estimation of reporting costs, but it was emphasised that any measures would be proportionate.

Small and Micro Business Assessment: According to Plum's research there is one business classed as 'small' (<10 employees), though the make-up of the adult services is unknown. We include the potential additional cost of 1 extra staff member for these organisations in the estimates, but they may be exempted from the regulations by the regulator on the grounds of proportionality as allowed in the regulations.

Costs to regulator

Ofcom will incur the cost of regulating VSPs over an interim period until a new regulator is put in place or Ofcom are granted additional power, as a result of the Online Harms Regulations. Ofcom have estimated that set up costs for taking on responsibility for interim measures to be approximately £5m for 2020/21, though this could be revised.

Ofcom have not undertaken a detailed cost estimation for a further period as they have only been designated as the interim regulator and expect that before 2025 either a new online harms regulator will be carrying out VSP regulation, or Ofcom will have a further expanded set of duties

54 https://www.ofcom.org.uk/__data/assets/pdf_file/0017/101582/vod-fees-statement.pdf

55 The headline EANDCB is in 2016 prices, 2017 present value base year for consistency with other impact assessments

56 https://ec.europa.eu/digital-single-market/en/news/impact-assessment-accompanying-proposal-updated-audiovisual-media-services-directive

57 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800603/Final_proportionality_.pdf

which encompass VSPs. Indicatively, they would expect the costs to fall due to synergies, not incurring the one-off recruitment and IT development costs on an ongoing basis and the embedding of BAU enforcement work. We also subtract the fees paid by VSPs.

Based on discussions with Ofcom, we estimate the annual running costs to be between £3m-£4.5m; however, this is subject to change and may be revised once more precise estimates emerge. Interim measures will be in place for a maximum of 5 years, but could be in place for a minimum of 1 year. Ongoing cost beyond this period will be captured by the Online Harms framework, and addressed in a separate impact assessment. Therefore, we only calculate the interim costs to the regulator in the Net Present Social Value. We factor in this cost for a maximum of 5 years in the headline figures, but also display this over the 10 year appraisal period for transparency. This has a **central NPV estimate of -£18.8m over 5 years**, and -£33.5m over 10 years.

Summary of impacts

Table 5: Summary table of impacts
The table below summarises the costs and benefits to business, a regulator and the government over a 10-year appraisal period.

Impact on business	**Detail (10-year appraisal period)**
1 Advertising minutage (linear broadcasting)	**No impact -** Current regulations already gold plated above AVMSD minimum.
2. Accessibility of emergency communications (linear broadcasting)	**Not monetised -** Unlikely this will incur any cost to businesses because infrastructure and processes are already in place to make their services accessible.
3. European Works quota	**Net direct cost to business is estimated at £80m (central estimate) -** This estimate is illustrative of the additional profit UK producers could receive less the additional cost to ODPS providers of disruption to their business models and administering prominence.
4. Depiction of children consuming alcohol in advertisements	**No impact -** Unlikely that this occurs on ODPS advertisements.
5. ODPS accessibility	**Not monetised** - DCMS will produce a full IA for the equivalent regulations coming into effect in 2019.
6. Linear Broadcaster/ ODPS levy scheme	**No impact -** Preferred option is to not adopt a levy scheme.
7. Video-sharing platforms	**Cost to VSPs is estimated at £13m** - This is based on annual cost of new moderators on top of potential set-up costs.
8. Familiarisation costs (costs to Broadcasters and ODPS platforms to read and circulate relevant changes of AVMSD)	Costs to broadcasters **- £36k** Cost to ODPS platforms - **£130k** Cost to VSPs - **£186k**
EANDCB[58]	**£9.82m**
Total cost to regulator	**£18.8m**
Total benefit to government	Between **£0.5m - £1.5m a year**

4.1 Risks and assumptions

[58] 2016 prices, discounted to 2017

The following main risks and assumptions are associated with option 2:

Assumption	Evidence	Risk
Familiarisation costs	Based on estimates of working hours required to understand the legislation and the implications on the company. Benchmarked against previous government impact assessments.	Given the relatively small number of businesses in scope, variations to the assumption have little impact.
4 - 5 ODPS organisations in scope of European works quota	The number of organisations in scope is based on Ofcom data as well as additional research and expert knowledge of the sector. The largest uncertainty is concerning the thematic criteria.	If more or less organisations are in scope, this could have a significant impact on the headline figures. We know that the number is very limited due to the extensive multiple exemption criteria. It seems more likely, based on the available information, that we have overestimated the number of non-exempt organisations in scope.
1% - 30% fall in ODPS profit from European works quota	The cost to ODPS providers of replacing non-European content is based on loss of overall profit. Current profit is calculated based on company accounts, and the library size being replaced is used as an order of magnitude of the impact. We believe the impact may be limited due to: the library size being maintained, unpopular content being replaced, the use of revenue sharing models, pre-existing holdings of European works and the potential for European content to be equally or more profitable.	To account for this large uncertainty, a wide degree of sensitivity is included. The upper bound represents a very large overall cost across a few organisations, given the mitigating factors listed. The European Commission detailed in their impact assessment that this impact should be limited due to just one of these factors. Therefore it is a relatively low risk that this cost would be greater than the estimated range.
£265,000 per hour production spend on UK content	Based on the BBC tariff structure of mid-cost entertainment. The cost was kept conservative due to stakeholder responses on market reactions to quotas.	The cost of programming is positively skewed. The greater the cost of programming the greater the benefits of this measure.
85% UK ODPS spend is domestic	Based on European Commission and World Input-Output Data (WIOD)	The data is taken from 2011 to 2014. In addition there could be a degree of error between this use of proxies and the actual figure. A sensitivity range of 20% is included to account for this.
70% of production revenue earned by UK co-producers	The real-life potential range of 50% to 100% is reduced on estimation to 55% to 85% by drawing comparison with European Audiovisual Observatory data	Given the 30% sensitivity range and the contextual information, there is very little risk that we have overestimated this impact on the benefits.
7% average profit for UK production	Taken from Deloitte (2017) data on company accounts of ‘TV Production and Distribution’ companies	There is a small risk that this sector average is not representative of the companies directly affected by the

companies		regulation. Moreover, as profit is used instead of GVA, the benefits to the UK economy may be underestimated.
VSP transition costs	Based on previous DCMS and European Commission impact assessments on the likely cost of new software measures.	A range of sensitivity is included. As the measures listed under this section go beyond the minimum requirements of the directive, this may be an overestimation of the costs.
VSP annual costs	Based on research commissioned to inform this policy work, along with comparative data from a large company with significant monitoring procedures in place.	There is a risk that not all in-scope VSP have been identified. However, we know this risk is limited by the potential exemption criteria. Whilst the comparator company was used as a benchmark, this could be skewed for multiple reasons. To help alleviate risk of underestimating the cost, this has not been reduced in the lower bound.

Overall, the assumptions taken do have a large impact on the results of the analysis, but this has been mitigated by taking a greater degree of sensitivity, especially where uncertainty is higher. This has led to a reasonable range of estimates which are indicative of the scale of impacts given the best available evidence and industry responses.

4.2 Other considerations and impacts

Distributional Impacts

There are not expected to be any significant negative distributional impacts.

Small and Micro Business Assessment (SaMBA)

Due to the proportionality principle, small and micro businesses are likely to be exempted from the rules which are not feasible to impose due to administrative burdens or practicalities, in particular:

- **The 30% European works quota for ODPS :** The preferred option foresees that the requirements on the promotion of European works will be waived for low audience, low turnover and thematic on-demand services. Therefore, no SaM businesses will be significantly negatively affected.
- **New requirements on video-sharing platforms:** The UK has discretion in relation to defining the precise scope and enforcement of these measures, proportionate to the size of VSPs, potential harm and type of user at risk. Our research identified 1-3 small and micro VSPs under UK jurisdiction and suggests that there may be a long tail of very small-scale services potentially in the UK's jurisdiction. All of the above may be exempted by the regulator on grounds of proportionality.

Hence the effect of the AVMSD on SaM businesses is deemed to be small.

Gross Effects

The gross costs of the proposal are above the £5m threshold alone, but the overall net impact is lower. This EANDCB could be further reduced when considering the unmonetised benefits.

Wider Impacts

There are no significant wider impacts on top of those considered above, such as impact on the regulator and government. These are shown to be minor.

5.1 Assessment of impact on trade

Under new guidelines from the Better Regulation Executive (BRE) and Regulatory Policy Committee (RPC), the department is required to provide a short qualitative assessment of the potential impact on trade and investment. Firstly, given this is an EU directive, the regulations are not expected to create additional barriers within the EU, including in a scenario where the UK leaves the trade bloc having transposed the legislation domestically.

Only those based in the UK and under the jurisdiction of Ofcom will be subject to the new code, and more widely, those based in the EU and subject to their respective regulators. This means that domestic companies may be subject to more regulation than non-EU competitors. However, in regards to the European works quota, as the regulations favour European content, TV production companies based in Europe will have an advantage over non-European companies in domestic markets. However, this impact in the UK is limited by the fact that c.97% of ODPS providers are either already meeting the quotas or are likely to fall under the multiple exemption criteria.

5.2 Monitoring and Evaluation

There is not a review date set, nor a statutory clause. The Directive cannot be subject to review but our implementation means that we will be able to monitor future developments and make changes where appropriate. Ofcom will continue to collect information on European works, accessibility and the protection of minors. This refit means that VSPs will report more than previously, giving us a richer evidence base if we were to revise this policy in the future.