Ofcom’s Submission to the
Byron Review
Annex 3: TV Content regulation and child protection:
policy, practice and user tools

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Section 1
This Annex describes the policy framework and the operation of television content regulation including both broadcast and on-demand TV services.

Overview: policy context and aims

1.1 Statutory regulation

Television is subject in the UK (and throughout much of the world) to high levels of statutory sectoral oversight and regulation. Unlike almost all other media, both older and newer, UK television broadcasting requires authorisation by licence, and through the licence, attracts detailed regulation. In respect of content control (other, quite different ends are also sought through the regulatory framework) this combination of sanction and supervision enables a detailed but very flexible system, which both reflects broad public policy concerns and addresses particular, confined issues.

Content control for television – broadly, the activity of discouraging or correcting material considered against the public interest – has always operated within a statutory or, in the case of the BBC, a proximate regime. Self-regulation as it is understood in non-broadcast schemes (as distinct from the very different circumstances that have conventionally applied to the BBC’s self-regulation) has never been thought suitable for television.

The reasons for such careful and enduring regulation are, in considerable summary, the medium’s high impact and the limited control available to viewers. Together these aspects of television have driven policy about what can be included on television and when it can be scheduled: they form the core of the policy context.

1.2 Impact and viewer control

The television is a particularly powerful medium: being exposed to audio-visual (AV) content can have a significant impact on the consumer; for instance, in causing harm or offence. (Of course, the concept of impact also reflects the potential for cultural value creation – in other words, the potential for societal benefit – a point that should never be overlooked in the development of content regulatory policy.) This characteristic remains at the centre of decisions about the regulation of television: in a 2006 speech about proposed amendments to the European directive on transfrontier television (the Television Without Frontiers directive), Commissioner Viviane Reding said: “Pictures in general, and moving pictures combined with sound in particular, go right to the heart of how people think, act and decide”.

As well as a product of the intrinsic power of AV content, impact arises because the scale of audiences to broadcast media can be large; where this is so, the aggregate impact is also very significant. And the great majority of television services carry the potential to reach very large numbers, by virtue of their distribution, even if many channels attract modest audiences.

Another, related aspect is the viewing context. Watched in the home, and often ‘in the family circle’, television occupies a particular status. Home viewing produces an intrusiveness that heightens the effect of what is seen and heard, as does the authority that attaches to a nationally available, simultaneous mass medium.

Television, especially analogue terrestrial television, is also defined by its immediacy. The material is present in the home as soon as the set is turned on and viewers are
easily and immediately exposed to content. This low degree of control over what has traditionally been a ‘push’ medium – one in which the same material is transmitted simultaneously to many millions of homes at once – is a key part of the continuing expectations about broadcasting regulation. Most television remains a ‘turn on and watch’ experience, in contrast to material that is available through other media – which can variously be selected or received by users at their leisure according to their own individual preference, consumed over time, portable, displayed or monitored to control access, and formally reviewed and classified before release.

1.3 Technical change and regulatory adaptation

The previous sentence pointedly refers to most television offering relatively little control to the viewer. But as digital broadcasting takes over from analogue, viewer control is steadily growing with varying degrees of sophistication. Electronic programme guides (EPGs) and programme control tools generally provide greater management of access to linear, ‘push’ material, as does the well-established regime for near-video on demand (NVOD) and pay-per-view programming.

And, of course, some television is now offered purely on-demand, providing absolute choice over what to watch and when. Similarly, the dramatically decreasing cost of hard disk storage allows viewers themselves to manage their own ‘on-demand’ content libraries.

A detailed survey of the tools available to viewers is given later in this paper. However, it is worth noting here that these developments in the way television is consumed demand changes to how television is regulated, some of the responsibility naturally transferring to the viewer.

This evolution of the regulatory regime should not be perceived as a disruptive process. Rather, the development of codes of practice, written as expressions of high-level objectives from statute, constitute flexible regulatory instruments which can accommodate change and blend more conventional means of regulation with newer ones based on technical development.
Section 2

Current legal and regulatory structures

2.1 Television regulation and the general law

The legislative requirements governing control of television content can be split into two broad areas:

**Sectoral legislation for television broadcasting** – this establishes the framework for content regulation by Ofcom and sets out the licensing regime gives Ofcom the power to draw up regulatory codes and guidance governing standards and other areas of content control, and confers the power to enforce licence and code requirements. The framework is governed by the 1990 and 1996 Broadcasting Acts and the Communications Act 2003.

**General legal (or non-sectoral) legislation** – legislation that has more general application but is also relevant to television content: the Obscene Publications Act 1959, for example.

**Figure 1**

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<th>General (non-sectoral) Legislation</th>
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Ofcom has specific powers of enforcement in relation to its regulation of content under sectoral legislation. For example, it can direct broadcasters not to repeat a programme, impose a financial penalty or, ultimately, revoke a licence (except in the case of Channel 4 and non-licensed public services provided by the BBC and S4C). However, Ofcom has no powers in relation to breaches of non-sectoral legislation, for example under the Obscene Publications Act 1959, the Protection of Children Act 1978 and the Public Order Act 1986. Such breaches may, for example, constitute a criminal offence and would therefore be a matter for the police to investigate and the relevant prosecution authority to enforce through the courts.

In general, the police’s role in the regulation of audio-visual material is limited to extreme material well outside the mainstream. For material to be found obscene, for example, it must be found that its effect is to “tend to deprave and corrupt” those likely to see or hear it.

Other interventions under non-sectoral legislation relating to audio-visual content could include prosecutions under the Cinematograph Films (Animals) Act 1937 (cruelty to animals in the making of a film), incitement, blasphemy and so on.
It should be evident from the above that television content is almost exclusively governed by sectoral regulation. Indeed, some pieces of general legislation have traditionally been disapplied for television because of the particular regulatory regime it has always been subject to. The Obscene Publications Act, for example, did not apply to television until the Broadcasting Act 1990.

2.2 Sectoral television content control: licensing

The central feature of the regulatory framework is the licensing regime which makes it a criminal offence to operate a UK-based commercial broadcast service (put simply, a TV channel) without a licence issued by Ofcom. BBC services are provided by the Corporation under the BBC’s Royal Charter and Agreement. This gives the BBC Trust responsibility for some aspects of content regulation, for example in relation to ensuring due accuracy, but also confers powers and duties on Ofcom for the purposes of carrying out its function of regulating aspects of the BBC’s output under the Communications Act.

Before it can grant a licence Ofcom must be satisfied that the applicant is a ‘fit and proper person’ to hold one. All licensed television services are subject to Ofcom’s Broadcasting Code which sets out rules, for example, to secure the protection of under-18s, and to ensure that generally accepted standards are applied to the contents of television services, so as to provide adequate protection for members of the public from exposure to offensive and harmful material.

Ofcom’s licensing regime is governed by the broadcasting legislation which includes the Communications Act. Ofcom must issue licences in accordance with the statutory requirements, which include separate regimes for public service broadcasters (Channels 3, 4 and 5 and the Public Teletext) and for other types of service; for example, services broadcast on digital terrestrial via a television multiplex (DTT services).

Television licensable content services (TLCS) are licensed on a ‘technology neutral’ basis. A TLCS licence is required for satellite services and services distributed by any means involving the use of an electronic communications network (for example, cable and other fixed or mobile networks including networks using internet protocol). Importantly, only one TLCS licence is required for these types of services to be delivered over a range of platforms. Thus, a licensed channel, which for example is first made available on satellite, can then be distributed over a mobile or cable network without the need to apply for a separate licence. Similarly, Ofcom could issue a licence for a channel which was only distributed via a mobile or an IP network.

However, it is worth noting that, to date, no licences have been issued for TV services distributed using IP networks. This is because either the channel had already been made available through some other network (and therefore already had an Ofcom licence) or it did not meet the necessary licensing criteria. A service is not licensable if it forms part of another service that is not provided wholly or mainly for the purpose of making television programmes available to members of the public, or if it is accessed through such a service.

As the paragraphs above highlight, the focus of regulation is changing to meet the profusion of services distributed in a growing number of different ways as new technologies emerge. However, in the previous analogue-only environment a relatively uncomplicated market structure existed, in which a small number of powerful channel operators controlled advertising revenue and production
investment, and held distribution licences (for the exclusive use of spectrum), as well as content licences for the operation of the television programme service.

The picture became more complex with the development of other means of distribution and particularly with the emergence of the digital TV market. Channel operators and content producers have proliferated and a small number of powerful platform operators have emerged, most prominently in cable and satellite. However, the same basic framework for content regulation has continued, with statutory broadcasting licences carrying conditions that secure a range of public interest benefits and safeguards.

Regulatory engagement with platform operators such as Sky and Virgin Media is limited to requirements intended to secure fair and open access to the platforms and their integrated programme guides (e.g. to help plurality). The legislation provides for the programme services that are carried on these platforms to be subject to content regulation rather than the platforms themselves.

2.3 Sectoral television content control: codes of practice

It is a condition of every licence issued by Ofcom that the holder observes the codes of practice published by the regulator. For television the two main content-related codes are the Ofcom Broadcasting Code, covering programme content, and the BCAP Television Advertising Code, covering advertising content. Here we concentrate solely on the body of programme rules set out in the Ofcom Broadcasting Code.

Codes of practice, certainly those used for the regulation of media, generally provide four benefits:

- flexibility – especially the facility to give due weight to the spirit of rules;
- a responsive and speedy means of applying and enforcing the rules (unlike general legal control operated through the courts);
- the ability to amend and update rules quickly; and
- the opportunity to supplement codes with as much guidance as might be necessary.

For broadcasting, a statutory footing, enabled through licensing, supplements these characteristics with the power to impose a range of material sanctions. The system is responsive, potent and is able to reconcile the policy aims of viewer protection with the wider principles of freedom of speech and commercial opportunity.

The Broadcasting Code contains rules to secure standards (and practices in relation to Fairness and Privacy) in the following areas, by section:

- protecting the under-18s;
- harm and offence;
- crime;
- religion;
• due impartiality and due accuracy and undue prominence of views and opinions;
• elections and referendums;
• fairness;
• privacy;
• sponsorship; and
• commercial references and other matters.

Plainly, the first two of these are the relevant subjects for this response.

2.4 The Broadcasting Code: protecting children

It is indicative of policy priorities that the objective of protecting the under-18s is placed first in the list within the Communications Act 2003 and first in the Broadcasting Code. This core concern has always been, and continues to be, the most important part of the rationale for the sectoral regulation of television content. The Broadcasting Code defines children as those under the age of 15.

Section 1 of the Broadcasting Code addresses the protection of under-18s under the following broad areas:

• scheduling and content information;
• coverage of sexual and other offences in the UK involving the under-18s;
• drugs, smoking, solvents and alcohol;
• violence and dangerous behaviour;
• offensive language;
• sex and nudity;
• exorcism, the occult and the paranormal;
• films, premium subscription film services, pay per view services, adult sex material on premium subscription services; and
• the involvement of under-18s in programmes.

A consideration of scheduling and the provision of information to audiences are the natural cornerstones of this section of the Code. And as part of an effective scheduling-based regime, a near-universally understood and agreed policy is necessary: the watershed.

2.5 The Broadcasting Code: the watershed

The creation of a pre-9pm safe viewing zone represents a necessary compromise between the imperative to protect younger viewers and the right of adults to expect a range of subject matter. It is, in effect, agreed between broadcaster and viewers that those in charge of children should be confident that before 9pm nothing that is
considered unsuitable for children should be broadcast and that after that time programmes may become progressively more adult in content.

As the figure below illustrates, awareness of the 9pm watershed has been tracked for many years.

**Figure 2: Awareness (%) of the watershed over time among all viewers and among parents**

Knowledge and understanding of the watershed took many years to build up to its current level of over 90 per cent awareness. The tracking data have shown that concerted and targeted initiatives are successful in raising awareness and that once general awareness has been increased it does not decline. Research has also shown that people are aware of their own responsibilities when using the watershed to inform them of the suitability of television programmes. This is generally accepted as a good thing. It is important to note, however, that such tools have to be well publicised to ensure their effectiveness.

This wide public knowledge and expectation of a viewing watershed fulfils one of the fundamentals of media regulation: that users should be aware of the general parameters of control within which content is supplied to them. From that point particular detail can be made available for viewers to refine further the viewing choices made.

Other than the specialised, off-screen concerns raised by the use of minors in programme-making and the reporting of crime involving minors, the areas of particular concern listed above are, in practice, mainly judged against the application of the watershed. In other words, the code highlights those subjects that the regulator is most concerned with and draws licensees’ attention to them. But, critically, the code makes very few absolute prohibitions: editorial judgment is preserved in the necessary balance with child protection.

This point is important: not all daytime or early evening viewing will be suitable for very young children. Not only do adults’ views on the suitability of material for children vary, but also other public interest considerations may weigh heavily in editorial judgments, especially in the fields of news and current affairs.
The Code (and its centrepiece, the watershed), therefore represents a system of regulation capable of fulfilling generalised audience expectations and providing the flexibility that is properly reserved to broadcasters.

2.6 The Broadcasting Code: harm and offence

Section 2 of the Broadcasting Code sets out further general requirements for the content and scheduling of programming in respect of the audience as a whole. From this paper’s perspective it is therefore particularly relevant to older children and young people.

This section reminds broadcasters of the need for special care with such subjects as offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation).

In addition, some subjects covered generally in Section 1, such as the portrayal of dangerous behaviour, receive further attention in Section 2. Suicide and self-harm, for example, require great care and are of special importance in the protection of young people.

The central importance of context further emphasises the degree of editorial judgment required and the regulator’s desire to square the audience’s expectation of protection with television’s freedom to cater for varying tastes and interests.

2.7 The Broadcasting Code: regulatory agility

A regulatory apparatus applied to media that cannot develop quickly will soon become obsolete. A code of practice provides the necessary flexibility, both in respect of changes in expectations about content over time and the more intermittent opportunities offered by technical innovation.

As well as establishing the watershed-based framework the Code allows broadcasters to take account of viewers’ ability to control the content presented to them. The greater extent of viewer control explains, for example, the different application of the scheduling rules for content which is encrypted and protected by a PIN code, from that which is broadcast unprotected (e.g. broadcasters can show films for older audiences earlier in the day under encryption and/or PIN protection).

Encryption techniques, PINs and the means of bringing the possibilities of these controls to the attention of viewers have allowed different audiences to maintain different standards for the programming they view while enabling a wider range of tastes to be met. More is said on content management and information tools below.

It should be stressed that technical controls over viewing, though powerful and of great use in allowing choice, are not treated as complete replacements for clock-based controls or limits on the most extreme material. ‘Adult’ sex material distributed on licensed TV services, for instance, must be encrypted and a 10pm minimum scheduling restriction still applies, whatever PIN or other mechanisms may be used. Similarly, the currently available security mechanisms are not considered sufficiently protective to enable R-18’ (i.e. hardcore ‘sex shop’) material, which is currently prohibited under the Code, to be broadcast.

More broadly, it should be clear from this account that TV regulation’s goal is not to ensure that no child or adult could ever be exposed to content which might harm or offend. Rather, the goal is to protect against this outcome by ensuring that adults
can take control of the media they and their children access. Taking this responsibility requires knowledge – for example of the watershed and competence with tools such as PIN control mechanisms. Where knowledge, tools and competence are all in place, greater flexibility is appropriately allowed to broadcasters.

2.8 The Broadcasting Code: sanctions

There are a range of sanctions available to Ofcom. These are:

- registering a breach of the code (and therefore the licence) as a matter of public record through Ofcom’s complaint bulletins;
- issuing a Direction not to repeat a programme;
- issuing a Direction to broadcast a correction or a statement of Ofcom’s finding;
- imposing a financial penalty on public service broadcasters of up to 5% of ‘qualifying revenue’ (including a maximum fine of £250,000 on the BBC and S4C); and for other types of service Ofcom can impose a maximum penalty of the greater of 5% of qualifying revenue or £250,000;
- shortening a licence (not applicable to the BBC, S4C and Channel 4); or
- revoking a licence (not applicable to the BBC, S4C and Channel 4).

As is made clear in the first bullet, because it is a condition of all licences that the broadcaster ensures the service complies with the requirements of the Broadcasting Code, a breach of the code is, de facto, a licence breach. Similarly, the penalties listed above are also available to Ofcom for breaches of other licence conditions, which set out a range of other obligations – some operational, others securing such things as provision of access services for the disabled.

This tariff of penalties can serve many ends and can be calibrated finely. In determining the amount of any penalty to be imposed Ofcom must have regard to its penalty guidelines.

As well as the deterrent of unpalatable publicity, written accounts of Code breaches detail the issues concerned, so airing matters for further debate. The Ofcom Broadcast Bulletins, which detail Ofcom’s findings, provide a set of useful precedents for licensees and others in the business of producing and distributing programmes to determine what may or may not be acceptable. And, importantly, reports of Code breaches – or of programming judged acceptable – allow for nuance: some breaches are of course more serious than others.

Although Ofcom might not impose a material sanction in cases where it simply records an in-breach finding in the Broadcast Bulletin, a licence breach will nevertheless have occurred. Repeated breaches are likely to attract a statutory sanction and to have the effect of elevating the level of penalty if the repeated nature of the breach aggravates the seriousness.

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1 ‘Statutory sanctions’ include fines, directions not to repeat, licence shortening and revocation. Reports of code breaches are not statutory sanctions but nevertheless provide a form of regulatory intervention where lesser Code breaches have been upheld.
In more serious cases Directions not to repeat programmes or to broadcast a correction or Ofcom finding, or both, add to the publicly recorded intervention.

Fines (which are paid by licensees straight to HM Treasury) can be set at appropriate levels. For the public service broadcasters other than the BBC and S4C, the maximum fine is 5% of ‘qualifying revenue’ for their last accounting period – essentially the annual total raised through advertising and sponsorship. For other broadcasters, the maximum is 5% of qualifying revenue or £250,000, whichever is greater.

Licence shortening and revocation need little explanation. Removing authorisation to operate is obviously the most extreme and complete penalty available to a sectoral regulator.

The most important point about this regime of penalties is its flexibility. Media content regulation needs to be able to draw on wide discretion and adaptable sanctions: the variety of possible issues is essentially unlimited, the seriousness of – and justification within – particular cases can vary hugely, and there is always a component of policy-making that must recognise important freedoms for broadcasters. Necessarily, Ofcom must act proportionately and in determining the amount any penalty it imposes Ofcom must have regard to its penalty guidelines.

2.9 Beyond broadcasting: the regulatory regime for video-on-demand

Video-on-Demand (VoD) services are not under Ofcom’s statutory control and currently operate under a self-regulatory model: the Association for Television on Demand (ATVOD), an industry body.

This is the result of a deliberate preference by the legislator, at the time of the Communications Act, based on the idea that the extent of audience control mitigates the need for statutory regulation.

ATVOD operates under a code of practice adopted in 2004, to which all members must adhere. The ATVOD Board also issues Practice Statements from time to time regarding matters relating to the regulation of on-demand services in the UK, which are incorporated into the code and are binding on members. The code is currently under review to adapt it to technological and market developments.

The ATVOD code is principally concerned with navigation (e.g., access control tools and content information), as a means of enabling audiences to avoid content which might offend them, and to protect the vulnerable against exposure to harmful content. In particular, the code requires that:

i) members recognise their responsibility to assist subscribers in their efforts to protect children and young people from unsuitable materials; and

ii) members recognise their responsibility to provide accurate, timely and reasonably prominent guidance in relation to their offerings of:

(a) content reasonably expected to cause significant offence or upset to some customers;

and

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2 ATVOD’s members at present include: BT, On Demand Group, Tiscali, Film Flex, Virgin Media, and Channel 4. The BBC is an Affiliate Member.
The ATVOD code is therefore concerned only with protection against harm and offence and is focused on the context in which content is presented – the tools and information which audiences use to manage their access to content - but not on the content itself.

This approach to VoD is significant not only because of the shift from a statutory to a self-regulatory model, but also because of the gradual shift in the focus of regulatory responsibility from channel to platform operator. Most importantly, it signals a related increase in the role that viewers themselves need to play in the regulatory environment, thereby recognising the increased degree of user empowerment brought about by digital technologies.

The future of the regulation for video-on-demand services in the UK needs to be set against the background of European developments in this area and, most prominently, the new Audiovisual Media Services (AVMS) Directive, which harmonises minimum European content rules for television broadcasting, and extends their scope to cover video-on-demand services, hitherto out of scope.

These are defined as services which are mass media, and whose principal purpose is the delivery of television programmes at the user's individual request, regardless of the technology used. The idea is to harmonise minimum content rules for a narrow set of services which are essentially similar to television, and whose form, content and means of access would lead users reasonably to expect an appropriate level of regulatory oversight.

Critically, the Directive allows for a lighter regulatory regime for on-demand services, on account of their lower impact and the greater degree of choice and control exercised by viewers. It encourages the use of self- and co-regulation as means of implementation, and refers to navigation tools such as pin protection, filtering and labelling as means of ensuring an adequate level of protection of minors.

As mentioned above, the AVMS Directive is technology-neutral, covering on-demand services regardless of the network through which they are delivered. This includes video-on-demand services made available to users over the internet. However, it is important to stress that the Directive does not extend to all video material available on the internet, nor to video-on-demand services offered by providers which are established outside the European Union.

This limitation of the scope of the new rules is deliberate. It was felt that a mechanical and indiscriminate extension of traditional national broadcasting regulation to any audio-visual material featuring on the internet – by definition a global medium – would be inappropriate and a disproportionate restriction on the fundamental right of freedom of expression. As importantly, an attempt to do so would prove ineffective, and could be counter-productive, in the overall design of a national media regulatory environment which delivers protection for consumers in a clear and comprehensible way.

Accordingly, for the UK this means that a clear line has been drawn between UK-based services, which are a natural extension of television broadcasting and which are offered on the internet as well as on other UK platforms (in essence, this extends to the current ATVOD membership plus a few others), and other audio-visual content available on the internet, for which a different approach is necessary.

The new regulatory regime under which VoD providers will operate, will therefore only be a small part of the picture in relation to internet-distributed content.
2.10 The value chain: regulation by self-interest and brand incentives

Figure 3: a digital television value chain

At each of the chain’s stages, opportunities exist for forms of regulation driven by commercial interest and market segmentation. These can be broadly classified as brand identity, viewer information and control technology. All are expressions of brand value. The range of user tools – control technology – is discussed in detail later.

The promotion of brand identity and viewer information are ‘soft’, though powerful, means of generating awareness of the nature of schedules generally and of specific programmes in particular. Brand identity will usually be the creation of a dependably ‘safe’ channel character – children’s or family entertainment, for example – but can equally be the clear branding of a service as targeting adults with content suitable only for them. Brands created in other media markets are good examples, although channels with no presence away from TV can do so equally. The key point is that thematic and widely understood profiles can be created.

This process is enhanced by EPG management, grouping services by genre and so creating clear demarcation between types of service and their suitability for different audiences (as well as aiding navigation).

Information can be supplied in a variety of ways. The conventional pre-programme advice given in continuity remains a valuable tool for broadcasters – and is a technique recognised by the regulator over many years. Some broadcasters, notably film channels but also more mixed services, formalise this pre-programme advice into ratings for films and programmes, sometimes relaying British Board of Film Classification ratings and sometimes using their own schemes. And digital broadcasting now offers the possibility of advice, warnings and ratings attached to EPG listings and accessible well in advance.

These are quasi-regulatory measures in that, although the regulator does not require them, they do suit the general interests of producers, channels and distribution platforms as well as, potentially, the public interest. Regulation can adopt or reflect these initiatives, thereby developing a regime between both regulator and industry.

Indeed, underpinning these various industry-based initiatives is the regulatory regime. Brand building by television services, platforms and others is more easily done where there is a general expectation of regulation. Such activity goes on with
the tide, not against it. The mixture of external regulation and enlightened self-
interest is a powerful and virtuous combination.

2.11 Parental control requirements: general

Digital television has brought a vast increase in the number of channels available to
viewers. With the undoubted benefit of increased choice has come a sharpened
need for the proper labelling and control of content that is not suitable for children.
Using the technology a system has been put in place that enables parents to use a
number of tools to control the content their children can access. This section provides
an overview of the different parental control tools available at present.

The parental control requirements for television are significantly different to those for
the internet, primarily because of the existing level of regulation.

- Broadcast content is regulated by Ofcom and has to conform to watershed
rules.

- The primary on-demand content providers (cable and IPTV companies) are
members of ATVOD and support a self-regulatory code. This will change after
implementation of the AVMS, as explained above.

The principal requirements for a parental control mechanism are:

- to block access to programmes of an adult nature; or

- to block access to channels primarily featuring adult content.

In addition, the control mechanisms may provide protection against unauthorised
expenditure, for instance on ‘pay-per-view’ events and premium-rate telephony
services.

And it should be noted that, recognising the utility of the controls now available,
Ofcom’s Broadcasting Code does allow licensees to make available earlier in the day
content that would traditionally have been restricted to later hours where there are
specified technical control mechanisms in place.

2.12 Technologies in use for parental control

Parental control systems for digital television rely on two key functions:

- an accurate rating or descriptions of content/channel by the service provider;
and

- a set of access control mechanisms provided by the platform (Sky, Freeview
etc), or by the consumer equipment, or both.
Parental control systems employ a number of different techniques to be used to provide layered levels of parental control.

These techniques are primarily features of the digital platforms, not the channels themselves. Not all platforms have the same technical capabilities – for example most Freeview set-top boxes lack any capacity to receive encrypted channels.

The complete parental control system involves the participation of content creators, broadcasters, platform operators, consumer equipment manufacturers and, finally, consumers themselves.
2.13 Personal Identification Number (PIN)

A consistent feature of parental control systems is the use of PINs as keys to unlock access to content and to system management menus. Now found widely in many other aspects of everyday life, like banking security, PINs are a familiar technique and therefore easily used in the control of TV viewing.

2.14 Encryption

Being able to deny access to services through encryption first allows pay models of television delivery. Its additional regulatory usefulness is in the attendant effect of ensuring that such services are only available to households that have specifically chosen them. Greater responsibility can be assumed for the subscriber and greater latitude in content and scheduling extended. The two basic types of subscription are:

- Premium subscription film services (i.e. not included in a basic package)
  - Ensures that the specific service is available only to households that have explicitly chosen it, but is available on a continuing basis.

- Pay-per-view
  - If PIN control or equivalent is in place, requires the subscriber (or someone they trust) to be present and allows for detailed, individual billing – a feature incorporated into broadcast regulation.

2.15 Programme rating-based blocking

Where the broadcast signal can carry the necessary rating information, a viewer can be required to enter a pre-arranged PIN number before the service can be accessed. Inevitably dependent on broadcaster willingness and resource, this approach is in theory a remarkably effective and convenient means of controlling children’s viewing as it can be enabled through a one-time setting and can block access within a schedule.
2.16 Channel-based blocking

Where entire channels might be considered inappropriate for child viewing, they can, on much digital equipment, be PIN-blocked altogether. (This application has uses beyond protection from harmful content).

- Typically, this is an optional feature that can be turned on and off.
- It is often a feature of a set-top box or TV, rather than being specified by broadcasters or platform operators.

2.17 Interactive service: pay-per-view

When selecting the relevant channel the viewer sees an interactive text screen and not a TV programme.

- The interactive screen is generated by software which creates a PIN access mechanism.
- The viewer is required to phone a special number to get a one-time PIN.
- Once authorised, the software provides access to a channel hidden from conventional set-top boxes and televisions.

The principal benefit of this technique is that it can be used on platforms without encryption or a ‘return channel’.

2.18 Channel concealment

A channel, or entire category of channels, can be removed from the navigation menus and the Electronic Programme Guide (EPG). Quite apart from the general facility of removing any sign of channels or EPG categories – typically adult channels – channel concealment has a benefit in removing programme titles and description that may themselves cause concern to some.

2.19 Service management

Where a PIN is in use, it is also used to control access to the parental control configuration menus, avoiding family members adjusting the settings without permission.

For example, the Sky satellite platform uses an internal data modem to provide a ‘return channel’ for information to flow back to the broadcaster or content provider. The mechanism delivers enhanced levels of interactivity and the ability to conduct online transactions. There are often call charges associated with the services, some at a significant level. Parents can use the PIN mechanism to block use of this facility.
## Parental control features by platform

<table>
<thead>
<tr>
<th>Platform</th>
<th>Encryption</th>
<th>Subscription level</th>
<th>Programme blocking</th>
<th>Channel blocking</th>
<th>Interactive service PIN</th>
<th>Channel concealment</th>
<th>PIN for PVR recorded programmes*</th>
</tr>
</thead>
<tbody>
<tr>
<td>BSkyB</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Not currently in use</td>
<td>Yes</td>
<td>Yes, optional</td>
</tr>
<tr>
<td>Virgin Media (cable)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes?</td>
<td>Yes</td>
</tr>
<tr>
<td>DTT - Freeview</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes, if box/TV supports interactivity</td>
<td>Some, depending on manufacturer</td>
<td>Yes, optional on latest PVRs</td>
</tr>
<tr>
<td>DTT - Top Up TV Subscription service</td>
<td>Yes</td>
<td>Not currently in use</td>
<td>Yes</td>
<td>Yes</td>
<td>Not currently in use</td>
<td>No (but no adult channels)</td>
<td>Yes, optional</td>
</tr>
<tr>
<td>BT Vision (DTT/IPTV hybrid)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes (DTT)/N/A IPTV</td>
<td>Yes</td>
</tr>
<tr>
<td>Tiscali/Homechoice (IPTV)</td>
<td>Equivalent access control</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>N/A</td>
</tr>
</tbody>
</table>

* Hard-disk based Personal Video Recorders (PVRs) such as Sky+ and Virgin Media’s + V-box

Top Up TV provides an enhancement to the DTT service based around overnight transmission of programmes which are automatically recorded by a PVR, providing subscribers with a library of programmes available to view instantly on-demand.

BT Vision boxes are PVRs which provide access to DTT channels, including Setanta Sports, and the BT Vision Video On Demand (VOD) service.

Tiscali TV/Homechoice provide tiered levels of service to family members on the basis of individual PIN-controlled logons. For smaller children a ‘mini-mote’ is available. It is a small child-friendly remote control with shaped buttons indicating the different functions. When in use only child-friendly content can be accessed.

Setanta TV also provide subscription TV services on DTT. Their services carry sports so no adult material is present.
The regulation of television is detailed, effective and flexible

An essentially ‘closed’ medium with limited capacity – relative to the internet – means that sectoral regulation can be applied

Licensing forms the backbone of the regulatory system, supplemented effectively by codes of practice which can express the regulatory objectives sought in legislation and through public policy more generally

Statutory codes of practice are ideal tools for TV regulation; self-regulation as an alternative would be incapable of creating the necessary depth of trust

A considerable benefit of sectorally controlled media such as television is the incentive for industry to adopt further measures to supplement external control and build brand value and thematic profile

Regulation of the internet could not, in our view, be achieved through a regime comparable to that used for television. A medium that is open at both ends and routes around obstacles is not amenable to sectoral regulation

However, some broad themes might usefully inform any thinking on means of control of children’s online media consumption:

- The general law will play a more direct and immediate role in the regulation of more extreme material online than it does in television
- Brand building and profile should be treated as important opportunities in creating a readily navigable environment
- Similarly, measures adopted – by imposition or by voluntary agreement – should seek to promote industry’s own capacity to protect children through such things as labelling and information
- Broad regulatory interventions, guidelines or education campaigns need publicity and time to become sufficiently well known; but once generally understood, awareness can be expected to remain high without further promotion. Among other points, this suggests that there is likely to be a significant requirement for online media literacy support and campaigns
- User-based tools will become more important in audio-visual media regulation and supervision: policies should be constructed to include these possibilities wherever possible
- Online regulatory schemes are more likely to win acceptance and avoid evasion if they actively reflect the legitimate and vital interests of freedom of speech and the right to innovation