

Video-sharing platforms: who needs to notify to Ofcom?

Draft guidance for consultation

[Video-sharing platforms: who needs to notify to Ofcom? – Welsh overview](#)

CONSULTATION:

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Contents

Chapter

1. Overview	1
2. Background and legislative context	3
3. Video-sharing platform service criteria	5
4. Jurisdiction	17
5. Notification requirements	21

Annex

A1. Essential functionality guidance summary	24
A2. Notification information	29
A3. Responding to this consultation	31
A4. Consultation coversheet	33
A5. Consultation questions	34
A6. Ofcom's consultation principles	35

1. Overview

What we are proposing – in brief

- New regulations applying to UK-established video-sharing platform (VSP) services came into force on 1 November 2020. From 6 April 2021, VSP providers in UK jurisdiction will be legally obliged to submit a formal notification of their service to Ofcom ('to notify'). This guidance is aimed at helping providers understand whether they fall within the scope of the definition of a VSP for the purposes of the Communications Act 2003.
- The guidance focuses on the criteria that make up the definition of a VSP in the Communications Act. It is provided to help service providers assess whether:
 - their service, as a whole or a distinct part (a 'dissociable section'), has the principal purpose of providing videos to the public;
 - their service has the essential functionality of providing videos to the public;
 - the service or dissociable section is provided via an electronic communications network;
 - the service or dissociable section is provided on a commercial basis;
 - the service or dissociable section is provided by a person who has general control over the organisation of videos, but not over what videos are available to users; and
 - the provider of the service or dissociable section is within UK jurisdiction.
- The criteria in the Communications Act 2003 are applied cumulatively. All the criteria are important in making an assessment and should be given careful attention.
- Providers will need to consider whether the criteria apply to their whole service or a 'dissociable section' of it.
- Where a provider has control over what videos are available on their service, this would suggest that they will need to notify as an on-demand programming service.
- This guidance also sets out when and how a provider will be expected to notify, and provides an indication of the process and information required.t

Purpose of this consultation

- 1.1 We are seeking views on our proposed guidance to help providers understand:
 - a) whether they are providing a service that is subject to the statutory framework for video-sharing platform (VSP) services under the Communications Act 2003; and
 - b) when and how they might need to notify their service to Ofcom.
- 1.2 We are inviting stakeholders, including services who may fall within scope of the regulation, industry and third sector bodies, and other interested parties, to comment on the draft guidance set out in this document from chapters 2 to 5. These chapters, along with an amended overview, will form the standalone guidance once finalised. The full list

of consultation questions can be found in [Annex 5](#). The closing deadline for responses is 5pm on 14 January 2021.

Next steps

- 1.3 After considering responses, we plan to issue final guidance in March 2021 ahead of providers' obligation to notify a VSP service coming into force on 6 April 2021. Existing providers will have one month to notify their services by 6 May 2021. We refer to this period as 'the notification window'.
- 1.4 We will consult separately on guidance on harms and appropriate measures early in 2021, with a view to publishing in summer 2021. Guidance on advertising requirements, as well as the enforcement regime for advertising on VSPs, will be consulted on in early 2021 and published by summer 2021.
- 1.5 Providers can email Ofcom at yspregulation@ofcom.org.uk if they have any questions about the notification and scope requirements. However, we are unable to provide legal advice and it remains the responsibility of each provider to satisfy the relevant legal obligations around notification.

2. Background and legislative context

Purpose of the guidance

- 2.1 New regulations applying to UK-established VSPs came into force on 1 November 2020. From 6 April 2021, existing video-sharing platform (VSP) providers in UK jurisdiction will be legally obliged to notify their services to Ofcom. Services commencing after 6 April are required to make an advance notification to Ofcom of their intention to provide a service.
- 2.2 This guidance is intended to help VSP service providers understand:
- a) whether they fall within scope of the definition of a VSP for the purposes of the Communications Act 2003 (“the Act”) – chapter 3, including
 - b) whether they fall within UK jurisdiction – chapter 4; and
 - c) when and how they may need to notify their service to Ofcom – chapter 5.
- 2.3 It is the responsibility of providers to make their own assessment of whether their service meets the statutory criteria and therefore must be notified to Ofcom. Where it appears to Ofcom that a service meets the statutory criteria but has not been notified, Ofcom has statutory powers to request information in order to make an assessment, as well as to require video-sharing platform providers to notify Ofcom if they provide a service that fulfils the relevant criteria. The guidance is therefore also intended to help providers understand how Ofcom is likely to apply the definitional criteria set out in the Act.
- 2.4 The Act also places responsibilities on providers of on-demand programme services (ODPS). The level of control that an online provider exercises over video content available on their service (see [paragraphs 3.42-3.52](#)) is a key factor in assessing whether the service is an ODPS or a VSP. Each service will be different and needs to be judged on its own facts, but there may be cases where a platform consists of a distinguishable ODPS and VSP service, where a dissociable section of a VSP service meets the ODPS criteria, or where a VSP service carries an ODPS. Where relevant, providers are therefore encouraged to refer to [the statutory criteria for ODPS](#) under Part 4A of the Act. Ofcom is expected to publish updated guidance around who needs to notify as an ODPS in early 2021.

Legal framework

- 2.5 Part 4B of the Act transposes the new European regime for VSP services under the revised [Audiovisual Media Services Directive](#) (“AVMSD” or “the Directive”). The AVMSD sets the regulatory framework underpinning the audiovisual services single market in the European Union. Under the terms of the Withdrawal Agreement, the UK committed to implementing EU legislation up until the end of the transition period. [Part 4B of the Act](#) was introduced under Government regulations made on 30 September 2020, which came into force on 1 November 2020.

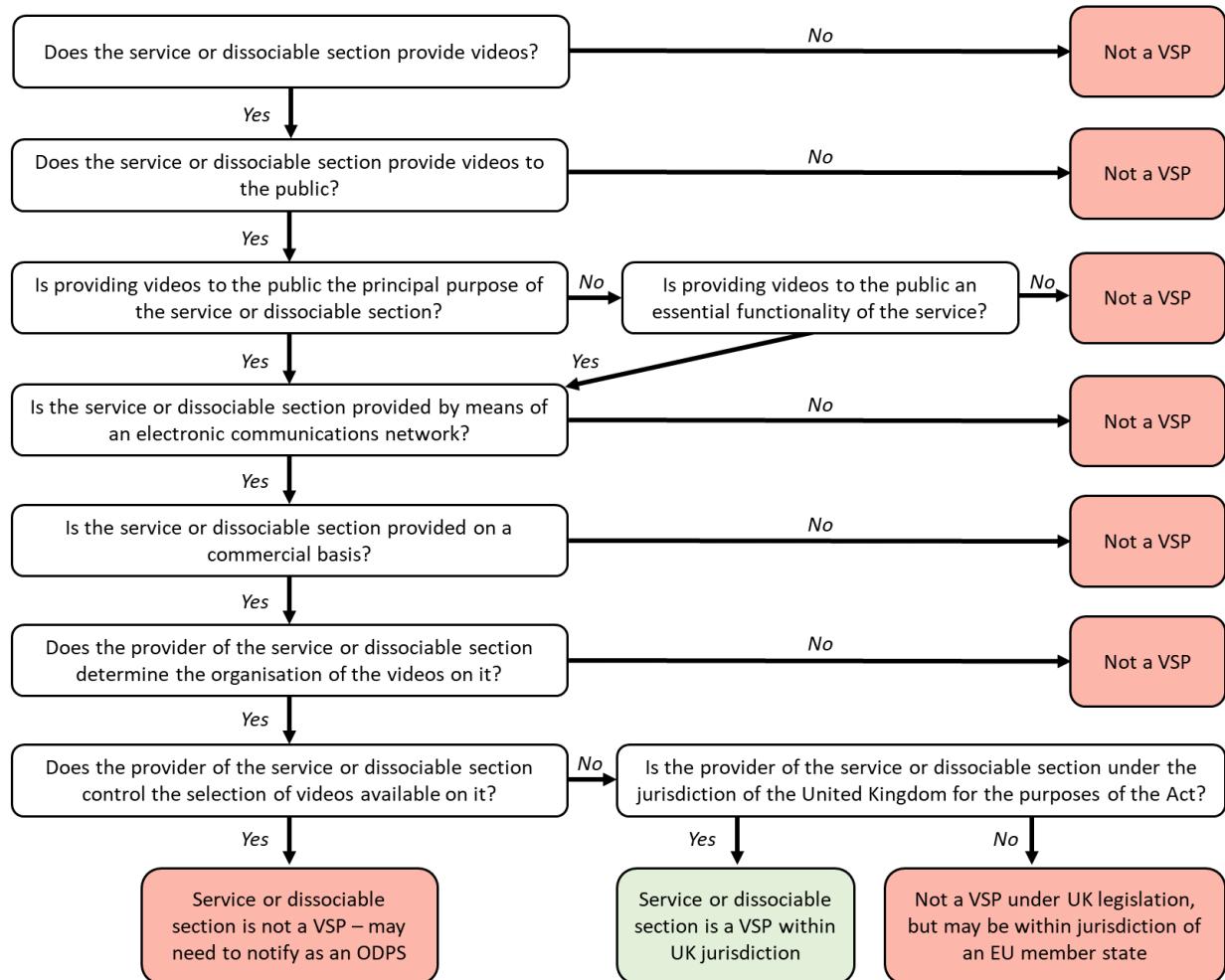
- 2.6 In drawing up this guidance, we have had regard to relevant Articles and Recitals of the amended Audiovisual Media Services Directive and to the European Commission's [Guidelines on the practical application of the essential functionality criterion](#) ("essential functionality guidance").
- 2.7 The AVMSD regulatory framework introduced under Part 4B of the Act will be retained in UK law following the end of the Brexit transition. The Government laid a ["fixing" statutory instrument](#) on 15 October 2020, amending Part 4B of the Act, clarifying when a VSP will fall under UK jurisdiction after the end of the Brexit transition period. The Government has stated its intention for VSP regulation in the UK under Part 4B to be superseded by new legislation to be introduced following the Online Harms Bill.
- 2.8 Section 368S of the Act sets out the meaning of a 'video-sharing platform' service. The criteria set out in the Act are applied cumulatively; a service or dissociable section of a service must meet at least one of the criteria in subsection 1 and all the criteria in subsection 2 of section 368S to be considered a VSP.
- 2.9 A service or a dissociable section of a service may be a VSP if it meets either of the following criteria under section 368S(1):
 - a) the provision of videos to members of the public is the principal purpose of the service or of a dissociable section of the service; or
 - b) the provision of videos to members of the public is an essential functionality of the service.
- 2.10 To be subject to regulation as a VSP, the service or dissociable section of a service must also meet all of the following criteria, as set out in section 368S(2) of the Act:
 - a) it is provided by means of an electronic communications network;
 - b) it is provided on a commercial basis;
 - c) the person providing it does not have general control over what videos are available on it, but does have general control over the manner in which videos are organised on it (which includes being organised automatically or by way of algorithms, in particular by displaying, tagging and sequencing); and
 - d) that person is under the jurisdiction of the United Kingdom.

3. Video-sharing platform service criteria

- 3.1 This guidance is structured around the five constituent elements of the definition of a VSP in section 368S of the Act. This chapter provides guidance to assist providers in assessing whether a service, or a dissociable section of a service, meets the following criteria of a VSP under the Act:
- a) **Is providing videos to members of the public the principal purpose of the service or a dissociable section of the service, or an essential functionality of the service?**
 - i) Does the service have ‘a dissociable section’ (see [paragraphs 3.10-3.15](#))?
 - ii) Does the service or dissociable section provide ‘videos’ (see [paragraphs 3.16-3.19](#))?
 - iii) Is the service or dissociable section available to ‘members of the public’ (see [paragraphs 3.20-3.25](#))?
 - iv) Is providing videos to members of the public a ‘principal purpose’ of the service or a dissociable section of the service (see [paragraphs 3.26-3.27](#))?
 - v) Is providing videos to members of the public an ‘essential functionality’ of the service overall (see [paragraphs 3.28-3.35](#))?
 - b) **Is the service or dissociable section provided via an electronic communications network (see [paragraphs 3.36](#))?**
 - c) **Is the service or dissociable section provided on a commercial basis (see [paragraphs 3.37-3.41](#))?**
 - d) **What level of control does the provider of the service or dissociable section have in relation to the videos?**
 - i) Does the provider have general control over what videos are available to users (see [paragraphs 3.43-3.47](#))?
 - ii) Does the provider have general control over the organisation of videos (see [paragraphs 3.48-3.52](#))?
- 3.2 Chapter 4 (Jurisdiction) provides guidance for providers of the service or dissociable section around whether they are within jurisdiction of the UK for the purposes of the Act.
- 3.3 These questions should be considered cumulatively. While many services may be considered to provide video over an electronic communications network on a commercial basis, close consideration should be given to the extent to which this is the ‘principal purpose’ or an ‘essential functionality’, the level of control the provider has over the content on the service, and the provider’s place of establishment.
- 3.4 It is the responsibility of service providers, taking legal advice where necessary, to assess whether their service is subject to the regulatory framework for VSP services under the Act. This guidance is not determinative, and some of the specific elements set out below may not be relevant in every case.

3.5 The wide variety of content, services and business models available makes it unrealistic to provide a simple checklist to determine the services within scope. However, the flow diagram set out below may help service providers consider how they might undertake an assessment of the criteria set out under the Act and navigate through this guidance.

Figure 1: VSP criteria assessment process



3.6 The following (non-exhaustive) list gives some examples of the types of service which may meet the definition of a VSP:

- A service which hosts videos and which allows users to upload videos and engage with other users' content, supported by advertising or subscriptions;
- An app which serves or recommends user-generated videos;
- A non-mainstream service viewable by any member of the public, comprising video content uploaded by users which is of special interest;
- A live-streaming service which allows users to host video streams viewable by other users; and

- e) A section of a service, such as subdomain of an online property or section of an app, which prominently features user-generated video content without editorial control by the host service, and which differs in form and purpose from the rest of the service.
- 3.7 Services which are unlikely to meet the definition of a VSP include:
- a) A service allowing users to upload and share videos within a business intranet;
 - b) An online newspaper, where videos are embedded within the journalistic or editorial content of the service; and
 - c) An ‘on-demand’ or ‘catch-up service’ for a broadcast television channel made available from the broadcaster’s own branded website (this is likely to be an ODPS service).

Is providing videos to members of the public the principal purpose of the service, or a dissociable section of the service, or an essential functionality of the service?

- 3.8 Under section 368S(1) of the Act, a service cannot be a video-sharing platform unless its principal purpose, or an essential functionality of it, is providing videos to members of the public. For a dissociable section of a service to be a VSP, it is necessary only to consider whether the principal purpose of the dissociable section is to provide videos to members of the public.
- 3.9 These criteria can be broken down into several elements as below.

Does the service have ‘a dissociable section’?

- 3.10 A single platform (for example, a website) could be a VSP in its entirety or include one or more dissociable sections. Ofcom acknowledges that this assessment may not always be straightforward and will depend on the particular circumstances of each case.
- 3.11 A ‘dissociable section’ could include a subdomain of a web property or a distinct part of an app, for instance. It might also include different types of user accounts or access to content, for instance, premium accounts that provide access to video.
- 3.12 Technical features or product design alone, however, are not the sole consideration in assessing whether part of a service constitutes a ‘dissociable section’. It may also be relevant to consider how the service is experienced from a user’s perspective; for instance, a ‘dissociable section’ of a service might feel qualitatively different from other parts. Relevant factors here could include:
- a) whether that part is distinguishable from other parts of the service in terms of its content;
 - b) whether its form or presentation differs from the rest of the service; and
 - c) whether its purpose differs from the rest of the service.

- 3.13 On this last point, services might consider the extent to which videos are provided for their own value as a standalone feature, rather than as supplementary to other forms of content on the service. Each case will turn on its own facts but, to provide an illustrative example, a standalone section of a newspaper website which is dedicated to hosting user-generated videos on the site might be considered as a dissociable section of that service, if the videos are independent of the written press articles. In a scenario where such video clips were embedded in the editorial content (e.g. as a result of links between the text and the clips), so that they are indissociably complimentary to the journalistic activity, these would not fall within the VSP framework.¹
- 3.14 Ofcom may need to use its information-gathering powers under section 368Z10 in assessing whether a ‘dissociable section’ of a service is a VSP. Relevant information may include:
- a) The amount and reach of video content provided via a dissociable section;
 - b) The revenue derived from audiovisual content via a dissociable section (also with reference to revenue generated by the service overall);
 - c) Traffic and user analysis – do users access the part of the service directly, and without visiting other parts of the service?
- 3.15 Where one or more dissociable sections of a service are considered to constitute a video-sharing platform service, only those sections will be covered by the regulation.²

Does the service or dissociable section provide ‘videos’?

- 3.16 The term “**videos**” is defined in section 368Z13 of the Act as meaning “a set of moving or still images, or of legible text, or of a combination of those things (with or without sounds), which constitutes an individual item irrespective of its length (and which is not an audiovisual commercial communication)”.
- 3.17 From a practical perspective, the definition of ‘videos’ encompasses a diversity of content,³ including, for example:

¹ In line with DCMS, [Consultation outcome: Audiovisual Media Services, Government response to public consultations on the government’s implementation proposals](#), 24 July 2019: ‘The government maintains its position that while newspaper websites remain outside the scope of the 2018 Directive and the future online harms framework, standalone parts of newspapers’ websites providing video services which are independent of the journalistic activities in content and form do fall into scope. The use of videos on websites, blogs and news portals which are connected to the journalistic activities falls outside the scope of the new provisions. This change reflects existing case law of the European Court of Justice on the issue, which found that the concept of a programme within the AVMS Directive includes video under the sub-domain of a newspaper website.’

See also Recital 3 of the Directive and Judgment of the Court (Second Chamber) of 21 October 2015, [New Media Online GmbH v Bundeskommunikationssenat, Case C-347/14](#).

² Recital 6 of the [2018 amending Directive](#)

³ This includes both user-generated video and programmes, as defined under Article 1 of the [2018 amending Directive](#) respectively as a “set of moving images with or without sound constituting an individual item, irrespective of its length, that is created by a user and uploaded to a video-sharing platform by that user or any other user”, and a “set of moving images with or without sound constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider, including feature-length films, video clips, sports events, situation comedies, documentaries, children’s programmes and original drama”.

- a) videos created and uploaded by individuals (i.e. user-generated videos);
 - b) professional-grade video produced, commissioned and uploaded by established media companies, including broadcast programmes or programmes included in an ODPS where they are made available on a VSP;
 - c) short- and long-form video;
 - d) video which is pre-recorded and uploaded;
 - e) video which is livestreamed;
 - f) video formats which include static imagery; and
 - g) video formats which do not feature sound.
- 3.18 Some videos like these may also be available on ODPS. Therefore, in order to determine what type of service is being provided, a key consideration will be the level of control the provider has over the videos included in the service or dissociable section (see [paragraphs 3.42-3.52](#)), rather than the nature of the video content itself necessarily.
- 3.19 Animated images such as GIFs, in their own right, are not covered within the VSPs framework (except where they are used within a video).⁴

Is the service or dissociable section available to ‘members of the public’?

- 3.20 As a general principle, Ofcom considers that ‘available to members of the public’ ordinarily refers to content that is openly accessible to the public at large and not limited to particular individuals.
- 3.21 The potential for online services to influence large numbers of people in a similar manner to traditional television and broadcast services is recognised as an important principle in the AVMSD. Indeed, a key driver behind the 2018 revisions to the Directive was the significance of VSPs as a medium to entertain, educate, share information, influence opinions, and compete with linear and on-demand services for audiences and revenues.
- 3.22 However, online services may reach members of the public in a range of ways which are not directly comparable to the broadcast environment. Given the wide range of functionality and business models of online services, it is not possible to draw clear lines in this area, and the following is intended to provide indicative guidance only.
- 3.23 Assessment in this area will be guided by the particular facts of each case; it will be relevant to look at the number of people who access the content, as well as the capacity for the content or service to be accessed widely.
- 3.24 In line with existing media frameworks and ODPS regulation, the fact that a service or dissociable section may require users to subscribe or register to engage with it, or that it may be subject to access controls or age verification would not, in and of itself, prevent the service or dissociable section from being available to the public. For example, video

⁴ Recital 6 of the [2018 amending Directive](#)

content made available to users on a paid-subscription basis (see commercial basis, [paragraphs 3.37-3.41](#)) is likely to be considered to be available to members of the public.

- 3.25 Websites or services made available to a small community of users on a non-commercial basis (see commercial basis, [paragraphs 3.37-3.41](#)) will not fall within scope of the regulation.⁵ Similarly, services which are available via closed networks (such as business intranets) would not be considered available to the public at large and would therefore fall out of scope of the regulation.

Is providing videos to members of the public the ‘principal purpose’ of the service or a dissociable section of the service?

- 3.26 ‘Principal purpose’ refers to the main activity of the service or dissociable section, and the extent to which the offering is built around video. It is important to consider both the users’ perspective (for instance, how video content is presented to them) as well as the wider market context. Relevant indicators could include:
- a) Whether the service or dissociable section refers to itself as a video-sharing service, and how it markets itself or positions itself against its competitors;
 - b) Whether the service or dissociable section is commonly referred to by others, including for instance users, press or analysts, as a video-sharing service;
 - c) How the content itself is presented or described, including consideration around whether video-sharing is the main draw for users of the service or dissociable section; and
 - d) Whether it provides media, features or services beyond video-sharing; in cases where it does, it may be relevant to consider the centrality of video-sharing to the service or dissociable section, including the proportion and relative prominence of video content on the service or dissociable section – for instance, the prominence given to video on a site’s homepage.
- 3.27 In some cases, it may not be straightforward to determine whether providing videos to members of the public is the ‘principal purpose’ of the service or a dissociable section of the service. In such cases, it may be more relevant to consider whether the provision of videos to members of the public is an essential functionality of the service.

Is providing videos to members of the public an ‘essential functionality’ of the service?

- 3.28 It should be noted that the essential functionality condition in section 368S(1)(b) applies only when considering the service as a whole, where providing video is not the principal purpose of the service or a dissociable section of it. It is not applicable when considering the dissociable section.

⁵ Recital 6 of the [2018 amending Directive](#)

- 3.29 Service providers should have regard to the [European Commission's guidelines](#) on the practical application of the essential functionality criterion. Assessment of 'essential functionality' will involve analysis of the service overall, assessing both the commercial and functional value of videos to the service.
- 3.30 'Essential functionality' is referred to in Recital 5 of the amended [Directive](#) to describe a situation in which video content is not "**merely ancillary**" to or does not constitute "**a minor part**" of the activities of the service.
- 3.31 Video is likely to be considered 'merely ancillary' to a service when it is provided exclusively as an accessory to an underlying activity of the service – for example, user videos on e-commerce platforms which encourage sales by demonstrating the goods or services in use. In contrast, where video is provided for standalone value of its own, it is more likely that video will be considered as an essential functionality.⁶
- 3.32 Video content can be considered as a 'minor part' of a service where it plays an insignificant role in the service overall. This may be assessed on a quantitative basis – for example, where a platform service hosts a significant number of videos it might suggest that they are a non-minor part of the service. It can also be assessed on a qualitative basis – for example, where videos contribute to the attractiveness, core functionality or market success of the service, irrespective of quantitative considerations.⁷ Other relevant factors might include the amount of video content that users consume through the service, the amount of investment in video and the prominence given to video content.
- 3.33 In its guidance, the Commission sets out four main areas which may be assessed to establish whether the provision of user-generated video is not merely ancillary or a minor part of a service, and therefore an essential functionality of it. These are:
- The relationship between the audiovisual content and the main economic activity or activities of the service;
 - The quantitative and qualitative relevance of audiovisual content for the activities of the service;
 - Monetisation or revenue generation from the audiovisual content; and
 - The availability of tools aimed at enhancing the visibility or attractiveness of the audiovisual content.
- 3.34 Within each of these areas, there are further indicators (15 in total) which may be used to make an assessment; these are summarised in [Annex 1](#). In making an assessment, the perspective of users should be taken into account, including their exposure to audiovisual content, the prominence given to video content and video-sharing functionality, and also how users regard the video content and functionality. Attention should also be given to the nature and role played by videos in the service offered, the positioning of the service on the market and monetisation of the service.

⁶ [European Commission essential functionality guidance](#)

⁷ [European Commission essential functionality guidance](#)

- 3.35 Where relevant to the purpose of determining whether they fall within the scope of the AVMSD, Ofcom may request information from service providers about the amount, use and reach of video content on their services, under 368Z10 of the Act.

Question 1: Do you have any comments on proposed guidance around subsection 1 of section 368S of the Act – whether the provision of videos to members of the public is the principal purpose of the service or a dissociable section of the service, or an essential functionality of the service?

Is the service provided via an electronic communications network?

- 3.36 Under section 368S(2)(a) of the Act, a service or dissociable section of a service can only meet the definition of a video-sharing platform if it is provided by means of an electronic communications network. This criterion will be interpreted in line with section 32 of the Act,⁸ for the most part referring to information shared over the internet, inclusive of mobile and fixed networks. Any service provided over the internet will meet this criterion.

Is the service or dissociable section provided on a commercial basis?

- 3.37 Under section 368S(2)(b) of the Act, a service or a dissociable section of a service will only be considered a video-sharing platform if it is provided on a commercial basis. In other words, the definition of a video-sharing platform service does not cover non-economic activities or non-commercial communities of interest.⁹
- 3.38 Assessment in this area will need to be undertaken on a case-by-case basis. As a general principle, the capacity to generate revenue through commercial arrangements, rather than actual revenue or profit, will be a key indicator. Businesses that intend to generate revenue or profit, but have not yet achieved the sufficient scale to monetise, may be considered to be offered on a commercial basis.
- 3.39 By way of illustration, the types of features which are likely to indicate that a service or dissociable section is provided on a commercial basis include:
- Advertising: the inclusion of commercial communications within (e.g. pre- and mid-roll advertising) or around (e.g. banner ads) the video content or wider service.

⁸ Under Section 32(1) of the Act, an ‘electronic communications network’ means— (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals— (i) apparatus comprised in the system; (ii) apparatus used for the switching or routing of the signals; and (iii) software and stored data; and (iv) (except for the purposes of sections 125 to 127) other resources, including network elements which are not active.”

⁹ Recital 6 of the [2018 amending Directive](#)

- b) Subscription: this includes where platform services make video (including a certain category of content) or platform features (including enhanced features, rewards or memberships) available in return for regular payments.
 - c) Transactions: this includes where video is made available on a pay-per-view basis, or where enhanced features can be purchased. It can also include donations (including creator tips), merchandising or other commercial arrangements; as set out below, platforms can benefit from these arrangements directly (for instance, by taking fees or cuts) or indirectly.
- 3.40 According to the [European Audiovisual Observatory](#), a VSP may be monetised both directly and indirectly. In the case of advertising, direct monetisation involves placing advertising against the videos, whereas indirect monetisation refers to revenue derived from increased traffic to and engagement with the platform, thereby increasing the value of services in the eyes of advertisers.¹⁰ Where the platform does not derive revenue directly from video content or the VSP service (including where only a ‘dissociable section’ of the service meets VSP criteria), but does from its wider service offering, the service may still be considered to be offered on a commercial basis. This may also be the case where a provider uses information from the VSP service to generate commercial value in other parts of its business (e.g. through monetisation of consumer data).
- 3.41 Service providers should also consult the European Commission’s [essential functionality guidance](#), particularly category 3 around monetisation or revenue generation, to consider whether their service or dissociable section monetises video. This guidance also considers ‘direct’ and ‘indirect’ forms of monetisation. As well as advertising and direct payment for the content, platforms may indirectly benefit from tracking users’ activities for commercial or marketing purposes. Payment for content, sponsorship agreements or other commercial contracts between brands and uploaders also indicate that audiovisual content is being monetised; platforms may benefit from such arrangements both directly (where they participate in or facilitate these agreements) and indirectly (by benefiting from the popularity of those creators).¹¹

What level of control does the provider have in relation to the videos?

- 3.42 Under section 368S(2)(c) of the Act, one of the defining criteria of a VSP is that “the person providing [the service or dissociable section] does not have general control over what videos are available on it, but does have general control over the manner in which videos are organised on it”. ‘Organisation’ includes automatic organisation or organisation by way of algorithms, in particular displaying, tagging and sequencing.

¹⁰ European Audiovisual Observatory, *Online video sharing: offerings, audiences, economic aspects*, p.2, pp.39-41

¹¹ [European Commission essential functionality guidance](#)

Does the provider have general control over what videos are available to users?

- 3.43 Whether the provider has general control over the selection of videos available is a key factor in assessing whether the service or a dissociable section of it is an ODPS or VSP. The description below provides just one element of the definition of an ODPS, so providers are encouraged to refer to [the ODPS criteria in Part 4A of the Act](#) if they require further context for assessment in this area.
- 3.44 An ODPS service is defined under the Act by reference to the provider having editorial responsibility for the service. As reflected in section 368A(4) of the Act, editorial responsibility encompasses two elements: general control over what programmes are included in the range offered to users, and general control over their organisation in that range. ‘Editorial responsibility’ for the purposes of the Act is determined at the point of the selection of content *and* the organisation of that content.
- 3.45 By contrast, the definition of a VSP reflects the fact that providers typically determine the organisation of video content, but not its selection. Generally, VSP services allow users to upload video content without prior approval or intervention, and to share that content (subject to it being in line with that platform’s terms of use). [The European Audiovisual Observatory](#) characterises VSPs by open access for all and a lack of platform involvement in the choice of content published, alongside algorithmic or human curation of content.¹²
- 3.46 A VSP service therefore differs from an ODPS in that the range and content of videos that are available is effectively determined by its users, rather than the service provider. While VSP providers do not have general control over the content available to users, they often do control components such as:
- the presentation of content, and its organisation or prominence (see paragraphs 3.48-3.52 below);
 - the platform interface;
 - the design, branding, look and feel of the service;
 - means of user engagement, such as comments;
 - the technical arrangements underlying the service;
 - protection mechanisms, content policies and complaints mechanisms; and
 - certain accessibility features such as subtitling of content.
- 3.47 Undertaking content moderation will generally not be considered as exercising control over what videos are available for the purposes of the Act. The key determinant will be the role the service plays in actively choosing the selection of content available on the service.

¹² European Audiovisual Observatory, [The legal framework for video-sharing platforms](#), 2018, p.1: the principal features of VSPs “the algorithmic or human curation of content; funding through advertising; and ex-post checks on the initiative of rightsholders or the platform itself”.

While they may make checks on content provided by uploaders, generally VSPs do not play a role in choosing the content which is published.

Does the provider have general control over the organisation of videos?

- 3.48 While VSP providers do not have general control over what videos are available on their service, they are able to control the ways in which these videos are made available to users.
- 3.49 Under section 368S(2)(c)(ii) of the Act, the organisation of content includes automatic organisation or organisation by way of algorithms, in particular by displaying, tagging and sequencing. ‘Displaying’ refers to how videos appear and are made available to the user (which may include promotion or recommendation of content). Tagging relates to the sorting and categorisation of the videos and may be done automatically or by humans (or both), including employees and/or users. Sequencing determines the order in which content appears. These are not exhaustive examples, and each may be used simultaneously or in combination with other organisational tools.
- 3.50 VSPs do not need to have exclusive control over the organisation of content but are likely to have decisive control over its organisation. For instance, many platform services rely on both explicit (e.g. sharing, liking content) and implicit (e.g. time spent watching) inputs from users to organise video content, but ultimately the provider determines if, when and how this affects the organisation of content.¹³
- 3.51 Content organisation may be generic or personalised, or both.¹⁴ In the case of generic organisation, the way in which videos are presented is the same for all users. This may be based, for instance, on the time of posting or by genre, which is determined according to tags labelled by the platform, creators or users. Many online platform services also adopt personalised systems of delivery, where the content presented to a user is based on factors known about that user, such as their previous use of the service or their geographical location. Further, the way in which providers organise, curate and offer content can be subject to continuous change.
- 3.52 The organisation of content on VSPs can be automated, but need not be.¹⁵ Assessment in this area will be guided by the particular facts of each case. Rather than the approach that is employed to organise the content, establishing that a service or a dissociable section of it meets the definition of a VSP, as opposed to an ODPS, will depend on establishing that the provider of the service does not play an active role in controlling the selection of videos available on the service or dissociable section.

¹³ M.Z. van Drunen, *Journal of Media Law*, [The post-editorial control era: how EU media law matches platforms' organisational control with cooperative responsibility](#) (July 2020)

¹⁴ Ofcom, [Online Nation](#) (2020), p.124

¹⁵ European Audiovisual Observatory, [The legal framework for video-sharing platforms](#), 2018, p.1: among the principal features of VSPs is “the algorithmic or human curation of content”.

Question 2: Do you have any comments on proposed guidance around subsections 2(a)-(c) of section 368S of the Act – provision via an electronic communications network; provision on a commercial basis; and the level of control providers have over the service?

4. Jurisdiction

- 4.1 A VSP provider will be within UK jurisdiction if it meets either the primary or secondary jurisdictional criteria set out below.
- 4.2 The UK Government laid [a “fixing” statutory instrument](#) on 15 October 2020, amending Part 4B of the Act, clarifying when a VSP will fall under UK jurisdiction after the end of the Brexit transition period. In this consultation we set out our proposed approach to the relevant jurisdictional criteria as these will apply before and after the end of the Brexit transition period.¹⁶ As the transition period ends on 31 December 2020, when our guidance is published next year it will refer only to the post-transition criteria.

Is the VSP provider within the jurisdiction of the UK under the primary criteria?

- 4.3 A VSP provider will be deemed to be within UK jurisdiction (both pre- and post-transition) if it provides the service, or a dissociable section of the service, through a fixed establishment in the UK for an indefinite period, and effectively pursues an economic activity in doing so.
- 4.4 Relevant factors in determining whether a company is established and pursuing an economic activity in the UK may include:
 - a) where a company’s central administration or head office is located;
 - b) where the company is registered;
 - c) the existence of stable arrangements in the UK for the exercise of an economic activity relating to the provision of the service or the dissociable section of the service, including, in some circumstances, the presence of employees or agents of the company in the UK; and
 - d) the nature of the economic activity carried out in the UK and how it relates to the overall service being provided.
- 4.5 Neither the location of the technical means used to provide the service (such as where the technology supporting a website is located), or where the service is accessible will determine establishment in themselves.
- 4.6 In cases where a VSP provider is established both in the UK and an EU member state,¹⁷ it will be necessary to consider which is the centre of the provider’s activities relating to the VSP service, or the dissociable section of the service, in question. Relevant factors here may include:

¹⁶ Our proposals in this document are based on what is set out in the fixing SI, as laid by Government. Our final guidance will reflect the final amendments made to Part 4B of the Act.

¹⁷ Following incorporation of the AVMSD into the EEA Agreement, the VSP regime will apply to EEA countries. We understand this process to be ongoing. See the [EFTA AVMSD status update](#).

- a) where management and commercial decisions about the relevant service, or the dissociable section of the service, are taken;
- b) the location of the workforce relevant to the service, or the dissociable section of the service, and where that workforce is established across different countries, the nature of the functions carried out in each country; and
- c) where the main functions concerning the provision of the service, or the dissociable section of the service, (such as any functions in relation to the organisation of content and advertising) are carried out.

Is the VSP provider within the jurisdiction of the UK under the secondary criteria?

- 4.7 Until the end of the Brexit transition period, a VSP provider may still be under UK jurisdiction if, although not established in the UK or an EU member state in accordance with the primary criteria, it:
 - a) has a parent undertaking or a subsidiary undertaking¹⁸ that is established in the UK, or
 - b) is part of a group and another undertaking of that group is established in the UK.¹⁹
- 4.8 Where the parent undertaking, the subsidiary undertaking or other undertakings in the group of a VSP are established across the UK and one or more EU member states, the AVMSD sets out a hierarchy of factors that will determine whether the VSP will fall under the jurisdiction of the UK or an EU member state.²⁰
- 4.9 After the end of the transition period, according to the draft [“fixing” legislation](#) laid by the UK Government, a VSP provider will remain under UK jurisdiction where it has a group undertaking established in the UK,²¹ and it does not fall under the jurisdiction of an EU member state for the purposes of the AVMSD.

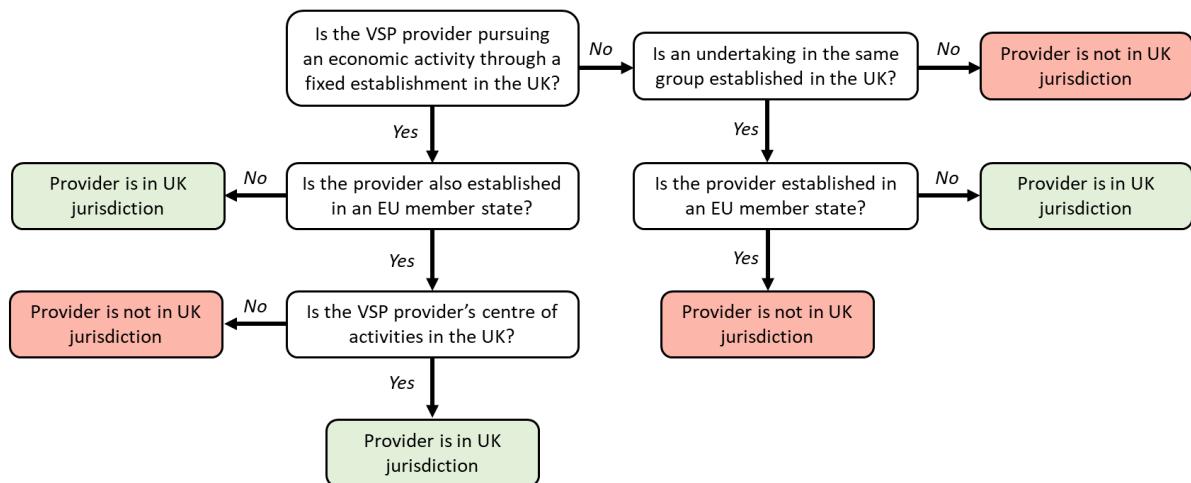
¹⁸ According to the AVMSD, the term “subsidiary” refers to an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking.

¹⁹ According to the AVMSD, the term “group” refers to a parent undertaking, all its subsidiary undertakings and all other undertakings having economic and legal organisational links to them.

²⁰ See Article 28(3) and (4) of the AVMSD: the EU Member State where the parent undertaking of the VSP is established will take priority, followed by the Member States where a subsidiary and a group undertaking is established. Where there are several subsidiaries or group undertakings established across different Member States, the service will fall under the jurisdiction of the Member State where one of these subsidiaries or group undertakings, respectively, began their activities, provided that they maintain a stable and effective link with the economy of that Member State.

²¹ The term group undertaking has the meaning given to it in section 1161 of the Companies Act 2006(5), except that it also includes all other undertakings having economic and legal organisational links to a VSP provider.

Figure 2: jurisdiction assessment process based on post-transition criteria



Note: after incorporation of the AVMSD into the EEA Agreement, references to EU member states should be understood as references to EEA member states.

- 4.10 To provide some non-exhaustive examples of how these jurisdictional criteria will apply in practice post-transition:
- If a VSP provider has establishment in the UK and no other country, it will be within UK jurisdiction;
 - If an undertaking in the same group as a VSP is established in the UK and another non-EU country, but has no establishment of any kind in an EU member state, it will be within UK jurisdiction;
 - If a VSP provider is established in both the UK and an EU member state, and its main centre of activities is the UK, it will be within UK jurisdiction and potentially also under the jurisdiction of the EU member state;²² and
 - If a VSP provider has its main centre of activity in an EU member state, and an undertaking in the same group established in the UK, jurisdiction will fall to the EU member state.

How will Ofcom consider these criteria?

- 4.11 Ofcom would be likely to consider some or all the above factors, as appropriate, together with any other factor that may be relevant in the circumstances, in order to determine whether it has jurisdiction in relation to a particular VSP provider.
- 4.12 Under 368Z10 of the Act, Ofcom has a power to require a person who appears to be a VSP service provider to provide information for the purpose of carrying out our functions in relation to VSPs, including determining whether they fall under the jurisdiction of the UK.

²² Before the transition period ends, if a VSP provider is established in both the UK and an EU member state, and its main centre of activities is the UK, it will be within UK jurisdiction alone.

- 4.13 Where a VSP provider's centre of establishment is not clear between the UK and an EU member state, we will cooperate with regulators in EU countries to make a determination. After the Brexit transition period, Ofcom will continue to have oversight of services in UK jurisdiction which are accessible by users across the EEA. In cases where regulators from EU countries wish to bring matters to our attention, we will continue to cooperate with them in relation to providers within our jurisdiction.

Question 3: Do you have any comments on proposed guidance around assessing whether a VSP provider is within jurisdiction of the UK?

5. Notification requirements

When do services need to notify?

- 5.1 The obligation in section 368V of the Act to notify will come into force on 6 April 2021 and existing UK-based VSP providers will have until 6 May 2021 to notify their service to Ofcom (we refer to this period as “the notification window”).
- 5.2 In all other cases, providers are required to make an advance notification to Ofcom of their intention to provide a service. In these instances, notification should be made to Ofcom at least ten working days before launch of the service.
- 5.3 In cases where providers operate both an ODPS service and a VSP service, or several VSP services, each of these services must be notified separately.
- 5.4 In certain circumstances, under section 368V(2) of the Act, providers must notify Ofcom about a service they have notified and are already providing. In such cases, the notification must be made before:
 - a) providing the service with any significant differences; or
 - b) ceasing to provide the service.
- 5.5 “Significant differences” here include any change that may affect the determination of jurisdiction (see [chapter 4](#) above). Other changes which Ofcom is likely to consider would lead to a significant difference to the notified service include:
 - a) a fundamental change in the nature of the service, including, but not limited to, changes which may affect the determination of the service as a ‘VSP’ (e.g. if the service takes editorial control of the content available on it) and would mean that the service ceases to be notifiable as a VSP service under section 368V;²³ and
 - b) a change in the service’s approach to how it meets the obligations set out in part 4B of the Act, which may fundamentally alter the character and nature of the service.
- 5.6 VSP providers will also need to notify Ofcom of changes to details provided in the original notification, such as contact information.

What does notification involve?

- 5.7 Notification forms will need to be submitted via a dedicated web portal on Ofcom’s website, which will be available to use from 6 April. An indication of the information to be included is provided in [Annex 2](#).
- 5.8 Providers may email Ofcom at VSPRegulation@ofcom.org.uk if they have any questions about the notification and scope requirements. However, Ofcom is unable to provide legal

²³ If the change results in it becoming an ODPS, it may instead be notifiable under section 368BA of the Act.

- advice and it remains the responsibility of each provider to satisfy the relevant legal obligations around notification.
- 5.9 Ofcom will establish and maintain an up-to-date list of notified VSP providers in the UK. When a service has been notified, the name of the service, public contact details for the provider and a brief description of the service will be published on the Ofcom website using the details supplied in the notification form.²⁴
- 5.10 In circumstances under paragraphs 5.4 and 5.5 of this guidance, where a VSP is subject to significant differences or ceases provision of the service, providers will be able to notify Ofcom of this via the dedicated web portal.

What if a service is not notified to Ofcom?

- 5.11 Where a person appears to be providing a VSP service from the UK, we will check whether the service has been notified to us. If not, we will make an informal assessment of whether the service meets the definition of a VSP. We will inform service providers about our assessment and the legal implications of being considered as a video-sharing platform provider.
- 5.12 Ofcom will carry out an overall analysis of the service, taking into account the criteria in the Act and the guidance above, and work on a case-by-case basis which takes account of the specific functionality of the service.
- 5.13 Under section 368Z10 of the Act, Ofcom has the power to require service providers to provide information which will help determine whether the service is a VSP within UK jurisdiction.
- 5.14 Under section 368W of the Act, Ofcom has the power to take enforcement action where we consider that a provider of a video-sharing platform service has failed to notify, including imposing financial penalties (as appropriate).
- 5.15 Ofcom will ensure procedures for dealing with cases and decisions are fair and transparent, including the opportunity to make representations before Ofcom reaches any final decision on scope and jurisdiction. For now, we intend to apply our [Enforcement guidelines for regulatory investigations](#), but we will be reviewing these in the context of the VSP framework and we will consult stakeholders if we identify any changes that need to be made.

²⁴ This is additional to and not a substitute for VSP service providers' obligation under section 368Y(2) of the Act to publish their name, address and electronic address, along with the statement that they are under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive and the name, address and electronic address of any appropriate regulatory authority on a publicly accessible part of that service.

Question 4: Do you have any comments on proposed guidance around notification of a service, including the detail provided in annex 2?

Question 5: Do you have any comments on any other part of the proposed guidance which is not explicitly set out in questions 1-4?

A1. Essential functionality guidance summary

- A1.1 In July 2020, the European Commission issued [guidelines](#) on the practical application of the essential functionality criterion of the definition of a ‘video-sharing platform service’ under the Audiovisual Media Services Directive. The guidance sets out the factors and service elements that national regulatory authorities (NRAs) will consider as indicators that a service has the ‘essential functionality’ of providing video to the public. The guidance is useful for both NRAs and services which may fall within scope of the AVMSD.
- A1.2 Assessments of essential functionality are to be made on a case-by-case basis, with authorities making service providers aware of ongoing assessments and, where desirable, in cooperation with regulatory counterparts in other states. Ofcom will refer to these indicators in its own assessments. In line with what is set out by the Commission, the criteria will not be applied cumulatively, so the absence of one or more criteria will not lead to the automatic conclusion that a service is not a VSP.
- A1.3 To provide an indication of Ofcom’s interpretation of these guidelines, the relevant indicators have been summarised by Ofcom below. The examples set out by the Commission are further supplemented by Ofcom. Examples in normal text are positive (indicating that video is more likely to be an essential functionality), while those italic text are negative (likely to indicate that video is a minor or ancillary part of the service).

Table 1: The relationship between the audiovisual content and the main economic activity or activities of the service

Indicator	Relevant examples
1 Overall architecture and external layout of the platform Where video is not merely ancillary or minor, it is likely to feature video-sharing features prominently in its layout, including its main pages, sharing interface or timeline.	<ul style="list-style-type: none"> • Features presenting new/popular videos/live broadcasting • Video category lists • ‘Take a Video’ button • Direct link to phone or computer gallery feature
2 Standalone nature of audiovisual content Where video is uploaded, shared, watched or downloaded by users by virtue of its intrinsic informational, entertainment or educational value, it is less likely to be merely ancillary or minor.	<ul style="list-style-type: none"> • <i>E-commerce platform allows vendors to share videos solely to illustrate products</i>
3 Specific functionalities tailored for, or specific to, audiovisual content Specific features to attract users to videos or to increase users' engagement with videos may indicate that it is not an ancillary or minor feature of the service.	<ul style="list-style-type: none"> • Auto-play functionality • Livestreaming functionality • Video-only search • Video-only filtered search results
4 The way the service positions itself on the market and the market segment it addresses This refers to the way in which the service self-identifies in its communication to the public, including users and advertisers, as well as the market segment it addresses. It will include reference to the way that the service is branded to the public or the way it markets or advertises its services to users.	<ul style="list-style-type: none"> • The company refers to itself as a VSP • The company emphasises its audiovisual component/offering in promotional material

Table 2: The quantitative and qualitative relevance of audiovisual content for the activities of the service

Indicator	Relevant examples
5 The amount of audiovisual content available on the platform If the platform includes a significant amount of video, it is more likely it that the audiovisual functionality is essential. If meaningful data is available, national regulatory authorities (NRAs) can assess this in quantitative terms, e.g. by considering the number of videos present on the platform, or proportion of videos compared to other types of content. In the absence of precise data, NRAs may also use qualitative assessments such as user surveys and sample analysis.	<ul style="list-style-type: none"> • High amounts of video of content on the platform • Third-party data indicates high level of video consumption by users
6 The use of audiovisual content on the platform Users making substantial use of videos on a platform could be an indication of videos' relevance to the service and of essential functionality. Quantitative data in this area might include the number of views, clicks, shares and likes relating to videos. Where possible, this may be compared with use of other types of content within the platform.	<ul style="list-style-type: none"> • User surveys indicate that users place value on sharing video
7 Reach of the audiovisual content Even if limited in number, popular videos can reach large numbers of users, for instance, via sharing and recommendations. The presence of popular video content aiming to inform, educate or entertain likely indicates that such content is non-minor. The target audience of the platform will be relevant here; particularly if a platform targets minors, or is regularly used by minors with no measures to discourage this.	<ul style="list-style-type: none"> • User surveys indicate access by a large proportion of children

Table 3: The monetisation or revenue generation from the audiovisual content

Indicator	Relevant examples
8 Inclusion of commercial communications in or around audiovisual content This includes commercial communications controlled both by the service and advertising space sold to third parties. Advertising policies around appropriate content may also be a relevant element to consider.	<ul style="list-style-type: none"> • Presence of pre-, mid- or post-roll ads
9 Making access to audiovisual content subject to payment If the platform makes access to audiovisual content subject to payment, it is more likely to be considered an essential functionality of the service. Monetisation systems may be managed directly by the platforms, or by uploaders and creators.	<ul style="list-style-type: none"> • Subscription or pay-per-view access
10 Sponsorship agreements between brands and uploaders Monetisation of content is also indicated by sponsorship or product placement agreements between third party brands of products/services and uploaders. As services may benefit from the popularity of those creators, this is considered an indicator monetisation even if the platform does not participate directly in the agreements.	
11 Tracking of users' platform activities Tracking users' interaction with audiovisual content for marketing and commercial purposes may also be considered as a means of indirect monetisation.	<ul style="list-style-type: none"> • Targeted behavioural advertising • Data-sharing agreements

Table 4: The availability of tools to enhance the visibility or attractiveness of the audiovisual content

Indicator	Relevant examples
12 Specific features or actions prompting the consumption of audiovisual content User interfaces that prompt or encourage the consumption of audiovisual content suggest that the content is relevant to both users and platforms and is therefore not minor or ancillary.	<ul style="list-style-type: none"> • Videos are suggested or shown on the main page • Videos are suggested without any specific request by the user • Video content is prioritised or promoted in user searches
13 Tools within or around videos that are designed to attract users and encourage their interaction These tools or systems indicate a service's aim to facilitate, improve or boost users' experience of audiovisual content on the platform and encourage their engagement with videos, therefore indicating video's relevance to the service. This indicator also includes any development or investment by services in innovative, immersive and interactive ways of sharing and consuming audiovisual content.	<ul style="list-style-type: none"> • Sharing options • Live chats specifically linked to audiovisual content • 'Watch parties' • Support for applications e.g. on smart TVs
14 Tools or systems allowing users to select the audiovisual content they wish to be offered Certain services allow users to personalise their own audiovisual offer by selecting what they are interested in, or opting out from certain types of video content. By helping retain users' attention, these can indicate video's relevance to the service.	<ul style="list-style-type: none"> • Interests and preferences associated with an account. • User questionnaires.
15 Tools or systems to track the performance and manage content uploaded on the platform Services can also enhance the attractiveness of video content by offering uploaders tools or systems to track and manage the performance of their content. This is also an indication of video's relevance to the service.	

A2. Notification information

- A2.1 The obligation in section 368V of the Act to notify will come into force on 6 April 2021. Existing UK-based VSP providers will have until 6 May 2021 to notify their service to Ofcom. In all other cases, providers are required to make an advance notification to Ofcom of their intention to provide a service, at least ten working days before its launch.
- A2.2 VSP providers will be able to access a webform to notify Ofcom of their service. We are likely to require information including, but not limited to:
- a) clear indication of the service (including a dissociable section of the service) in question;
 - b) relevant company details – in most cases this will be a limited company (along with the company number if applicable), although it could be another type of organisation, or an individual;
 - c) the UK launch date of the service, and when the provider was established in the UK;
 - d) a primary contact – the person to whom Ofcom should address inquiries about the notification, and the day-to-day contact for Ofcom on regulatory matters;
 - e) a compliance contact – the person to whom Ofcom should contact regarding any compliance issues (which may be the same as one of the other contacts if appropriate);²⁵
 - f) a public contact – this person's details will be published on the Ofcom website in line with paragraph 5.9 above;
 - g) a brief description of the nature of the service, including how it meets the criteria set out in the Act and how it is funded;
 - h) information relating to how the service is within UK jurisdiction (see [Jurisdiction](#));
 - i) information on how the service is made available – this should be a list of all the websites, apps or third-party platforms or portals (e.g. smart TV or set-top box menus) through which the service is available;
 - j) confidentiality requests – if a VSP service provider indicates to us that part or all of a notification form is confidential, we will carefully consider the request. Sometimes we will need to publish such notifications, including those that are marked as confidential, in order to meet legal obligations (for example, under the Freedom of Information Act 2000).

²⁵ Please see Ofcom's General Privacy Statement (available on our website at: <https://www.ofcom.org.uk/about-ofcom/foi-dp/general-privacy-statement>) for information about how Ofcom handles your personal information and your corresponding rights.

- A2.3 You must fill in all sections of the notification form. A declaration that the information has been authorised (e.g. by a company secretary, a partner or member of the governing body) will also need to be made.
- A2.4 After a service has been notified, Ofcom will engage with the provider to understand more about the service's nature.
- A2.5 Ofcom is a Data Controller under the Data Protection Act 2018 and is committed to protecting and processing any personal information shared with us in a manner which meets the requirements of the Data Protection Act 2018. Please see Ofcom's [General Privacy Statement](#) for information about how Ofcom handles your personal information and your corresponding rights.

A3. Responding to this consultation

How to respond

- A3.1 Ofcom would like to receive views and comments on the issues raised in this document by 5pm on 14 January 2021.
- A3.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-2/video-sharing-platforms-notifying-ofcom>. You can return this by email to the address provided in the response form.
- A3.3 If your response is a large file, or has supporting charts, tables or other data, please email it to vspregulation@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#).
- A3.4 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL, either:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files, or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A3.5 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A3.6 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A3.7 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A3.8 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 5. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A3.9 If you want to discuss the issues and questions raised in this consultation, please contact VSPRegulation@ofcom.org.uk.

Confidentiality

- A3.10 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.

- A3.11 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A3.12 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A3.13 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A3.14 Following this consultation period, Ofcom plans to publish a statement in March 2020.
- A3.15 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A3.16 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 6.
- A3.17 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A3.18 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:
Email: corporationsecretary@ofcom.org.uk

A4. Consultation coversheet

BASIC DETAILS

Consultation title: Video-sharing platforms: who needs to notify to Ofcom?

To (Ofcom contact): VSPRegulation@ofcom.org.uk

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A5. Consultation questions

- A5.1 Please refer to our proposed guidance, aimed at helping providers understand whether they fall within the scope of the definition of a VSP for the purposes of the Communications Act 2003, in chapters 2-5 above.

Question 1: Do you have any comments on proposed guidance around subsection 1 of section 368S of the Act – whether the provision of videos to members of the public is the principal purpose of the service or a dissociable section of the service, or an essential functionality of the service?

Question 2: Do you have any comments on proposed guidance around subsections 2(a)-(c) of section 368S of the Act – provision via an electronic communications network; provision on a commercial basis; and the level of control providers have over videos?

Question 3: Do you have any comments on proposed guidance around assessing whether a service is within jurisdiction of the UK?

Question 4: Do you have any comments on proposed guidance around notification of a service, including the detail provided in annex 2?

Question 5: Do you have any comments on any other part of the guidance which is not explicitly set out in questions 1-4?

A6. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A6.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A6.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A6.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A6.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A6.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A6.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A6.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.