

News UK submission to Ofcom consultation on draft guidance ‘On-demand Programme Services who needs to notify to Ofcom’

News Corp UK & Ireland Limited (**‘News UK’**) is the parent company of Times Newspapers Limited (publisher of *The Times* and *The Sunday Times*), News Group Newspapers Limited (publisher of *The Sun* and *The Sun on Sunday*), as well as the parent company of Wireless Group Media (GB) Limited (Times Radio, talkRADIO, talkSPORT and Virgin Radio). Through Wireless Studios, News UK is investing in podcasting.

As a media owner with a broad set of interests, we are well placed to comment on the challenges and opportunities presented by convergence and changing media usage habits of UK consumers. We therefore welcome the opportunity to respond to the consultation on Ofcom’s draft guidance (**‘the guidance’**) *On-demand programme services: who needs to notify to Ofcom*. News UK provides comments on the guidance in two areas:

- Inclusion of video output derived from licensed radio services within the list of exemptions
- Broadening the exemption for news publishers to include content hosted and distributed on VSPs

Inclusion of video output derived from licensed radio services within the list of exemptions

We appreciate the need to introduce some guardrails around what constitutes a ‘programme’ for the purpose of determining what is an ODPS now that ‘television like’ has been removed from the definition in the revised Audiovisual Media Services Directive, Directive 2010/13/EU (**‘AVMSD’**). However, we believe that the guidance as drafted - which provides an exemption for radio where a still image is used to accompany sound - is too restrictive.

As Ofcom acknowledges in its most recent Media Nations Report¹ UK audiences are increasingly turning to platforms like YouTube to find and to listen to audio content. We expect this trend to continue. Indeed streaming video images from our radio studios alongside the audio output on Video Sharing Platforms (**‘VSPs’**) has the potential to attract a new, younger, demographic of listeners. VSPs provide a route to market for established radio stations and this is fast becoming a part of our audio strategy. In setting overly restrictive regulatory guidance an unintended consequence would be to block this type of innovation in the radio sector.

In practical terms the guidance, as drafted, presents a challenge for the continuation of the visualisation of radio content and our ability to monetise this content, particularly on our commercial speech radio services talkSPORT, talkRADIO and Times Radio which are heavily reliant on integrated sponsorships and partnerships. Of these channels, talkRADIO

¹ Media Nations 2020: UK report

https://www.ofcom.org.uk/data/assets/pdf_file/0010/200503/media-nations-2020-uk-report.pdf

and Times Radio are dedicated to news and current affairs programming. Times Radio operates an 'ad break free' model, with commercial revenues through sponsorship messaging carried in programming.

The model of integrated partnerships provides crucial revenue for many speech radio stations, and is acceptable in line with Section 10 of the Ofcom Broadcasting Code. Wireless stations make their content available through platforms likely to be designated as VSPs, either through live streams of presenters presenting their radio shows, or through clips of live shows. However under ODPS rule 2.49, '*An ODPS may not include a news programme or current affairs programme that is sponsored*'. This would mean that the ability of Times Radio or talkRADIO to carry commercial messaging could be prohibited if the channel's on demand or VSP-hosted content is required to notify as an ODPS, despite being compliant with radio rules.

The broader market context within which commercial speech radio finds itself in the UK, is also of significance. The BBC - despite the launch of Times Radio last year - accounts for more than 80% of UK speech radio listening. The scale and resource of the BBC, coupled with their significant cross-promotional opportunities, make this a challenging market for commercial entrants to compete effectively to attract audiences and monetise their services. Nonetheless, Wireless is adding to the plurality of news media enjoyed by UK audiences, through investment in new station formats dedicated to high quality news and current affairs programming.

We therefore make two suggestions to the list of programmes *not* covered under the definition of a 'programme' under 3.10 of the guidance to ensure that radio stations, and particularly those carrying news and current affairs, can continue to operate under the terms of their existing radio licences:

1. To introduce an explicit exemption for video content derived from a live stream of a licensed radio service, the content of which is already subject to Ofcom regulation.
2. To amend the reference to audio content to "such as podcasts or on-demand radio programmes, with ~~no associated visual component beyond a single static placeholder image~~ accompanying video images of studio presenters, guests and associated graphics and branding"

Under 3.6 of the guidance, there should be an explicit exemption for licensed online audio to ensure that radio stations' own websites, and other sites and channels which host this type of content, are not caught in scope.

Broadening the exemption for news publishers to include content hosted and distributed on VSPs

We welcome the news publisher exemption under 3.6 of the guidance, which recognises the importance of maintaining the independence of the free press from statutory regulation. However the guidance as drafted does not provide sufficient flexibility for how news publishers are marketing their services online. Our concerns relate to dissociable services.

News publishers like *The Sun* and *The Times* and *The Sunday Times* increasingly use video content, hosted on VSPs, as a teaser to engage audiences and encourage them to visit their websites. This video content ranges from short form content of under a couple of minutes, or longer form content. This content is often hosted on the news publisher site to accompany articles, and then replicated and distributed on VSP services. *The Times* and *The Sunday Times* do not make bespoke content for their VSP channels, but may shorten video content from the website for distribution on VSPs. Only a small percentage of video content produced by *The Sun* is made specifically for VSPs. If Ofcom considers that news publisher VSP channels must notify, this would have the perverse outcome of news publisher content hosted on their own online services being subject to Ofcom regulation if this content appeared on a VSP channel too. This may affect freedom of the press.

The draft Online Safety Bill and accompanying explanatory notes presented to Parliament on 12 May 2021² make clear the UK Government's intention to exempt all news publisher content from the scope of online harms regulation. It proposes to introduce protections for journalistic content on third party platforms. Further to this, the Secretary of State has made clear that this extends beyond text-based journalistic content and that news publisher content hosted on video sharing platforms - citing YouTube specifically - will be exempted³. The government has determined how a news publisher will be identified for the scope of the legislation, which of course will be subject to the usual scrutiny. In the explanatory memorandum to the SI for the transposition of the revised AVMSD into UK law⁴, the government stated:

"The Full Government Response reiterated that the Transposing Regulations share broadly similar objectives to the online harms regime. It is the government's preference for the requirements on UK-established VSPs to transition to, and be superseded by, the online harms regulatory framework, once the latter comes into force. This means that requirements on UK-established VSPs to have systems in place to protect users will be encompassed in the online harms legislation."

While the primary purpose of the Online Safety Bill is to deal with harmful and illegal content which is user generated, the government has been clear of the need to ensure that all news publisher content is exempt from statutory oversight. We therefore believe that news publisher content hosted on VSPs - which is often replicated on news publishers' sites - should also be out of scope of the guidance to ensure that there is a consistent regulatory approach. We propose that a sufficiently broad exemption is introduced for news publishers

² Part 2 Section 14, Draft Online Safety Bill, 12 May 2021. Available here: <https://www.gov.uk/government/publications/draft-online-safety-bill>

³ Question from Julian Knight MP, to Secretary of State for Digital, Culture, Media and Sport, Rt Hon Oliver Dowden MP, 15 Dec 2020 on news publishers and exemption on video sharing platforms in Online Harms legislation. Available here: <https://hansard.parliament.uk/Commons/2020-12-15/debates/1B8FD703-21A5-4E85-B888-FFCC5705D456/OnlineHarmsConsultationhighlight=news+publishing+exemptions#contribution-9F7A0A6A-75E9-45F5-A32B-A063E2117646>

⁴ Explanatory Memorandum to Negative SI on AVMSD, September 2020. Available here: https://assets.publishing.service.gov.uk/media/60196584d3bf7f70be53a452/Proposed_Negative_SI_-_Audiovisual_Media_Services_Amendment_Regulations_2021_EM.pdf

for the purposes of this guidance, which references distribution via VSPs. We would welcome engagement with Ofcom on how to frame this within the guidance.

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