

ROKU RESPONSE TO OFCOM CONSULTATION ON THE DRAFT CODE OF PRACTICE AND DRAFT GUIDANCE ON THE AGREEMENT OBJECTIVES

This is the non-confidential version of Roku's consultation response. A limited amount of confidential material has been redacted and provided separately to Ofcom in a confidential version.

Roku welcomes the opportunity to respond to Ofcom's consultation on its draft Code of Practice for regulated television selection services and its draft Guidance on the Agreement Objectives. As a provider of one of the connected TV platforms likely to be in scope of the new regime (as a "regulated television selection service" or RTSS), we have a direct interest in how these proposals will work in practice to ensure that the Media Act meets Parliament's objectives for users, public service broadcasters (PSBs), RTSSs, and the broader TV streaming ecosystem.

Roku is a leading TV streaming platform. We build and operate the Roku operating system (Roku OS), which powers both Roku-branded streaming players and a growing range of smart TVs manufactured by third-party partners (known as Original Equipment Manufacturers, or "OEMs"). In the UK, our platform makes available a wide variety of video services, including public service broadcaster apps, global streaming services, niche and specialty providers, as well as our own advertising-supported service, The Roku Channel. Our business model depends on offering viewers a simple and easy-to-use interface that helps them discover and enjoy content from a wide range of providers. We know, too, that UK viewers overwhelmingly enjoy watching PSB content, and it has long been core to our model to partner closely with, and promote the availability of, PSB apps and programming to our users.

We have engaged constructively with Ofcom and Government over a number of years on issues relating to connected TV, including the Media Act, and are grateful for the open and pragmatic dialogue to date. Our intention in this response is to support Ofcom's objectives – in particular, ensuring that PSB content is easy to find and that people with disabilities can access and enjoy streaming services – while highlighting areas where we believe adjustments are needed to ensure that the framework is proportionate, future-proof, and workable in practice.

In preparing these comments, we have focused on three themes: (1) ensuring that the Media Act standard of "appropriate" prominence is fully reflected in the final regime; (2) preserving space for platforms to innovate in how users access and select services and content on connected TVs, which the Media Act also mandates; and (3) calibrating obligations so that they are deliverable in the real world. We hope our suggestions are helpful in refining the Code and Guidance, and we remain committed to working closely with Ofcom as it finalises and implements the new framework.

Finally, Roku has included in an annex a series of concrete editing suggestions which, in Roku's view, would help to reflect the intent of the Media Act and the analysis in Ofcom's consultation, while keeping the regime proportionate and workable in practice.

Question 1: Do you agree with our approach to considering appropriate prominence and our analytical framework? Please provide your reasoning, and if possible, any supporting evidence.

Roku welcomes Ofcom's objective of ensuring that PSB content is easy to find and discover on RTSSs. We recognise the importance of a framework that is flexible and future-proof. We agree that the concept of "appropriate prominence" must be applied in a way that reflects the

diversity of RTSSs, including global platforms operating across multiple markets, and that focuses on outcomes for users, rather than prescribing detailed technical specifications and user interface designs.

Roku broadly supports Ofcom's overarching approach, but considers there is a risk that, in its current form, the draft Code and Guidance lean toward a more expansive conception of prominence than the "appropriate" standard ultimately adopted by Parliament. During debates preceding passage of the Media Act, Parliament expressly considered – and declined – to establish a standard of "significant" prominence, instead opting for "appropriate" prominence as a compromise intended to ensure that PSB content is easy to discover without unduly constraining audience choice or platform innovation. Taken together, the measures described in the consultation – spanning app menus, primary content areas, search, listed channels, accessibility features, and associated commercial expectations – could move the regime in a direction that unduly hinders RTSS providers' ability to innovate. In our view, it will be important to refine the final Code so that RTSS providers can meet their duties without being required to make changes that materially limit their ability to balance PSB content with other content, or that preclude their ability to differentiate and innovate in how users experience their services.

Prominence duties where a bilateral arrangement has been agreed

For the reasons above, it is vital that the Code operates as a genuine safe harbour rather than a de facto mandatory blueprint. Roku acknowledges that Ofcom is entitled to set out a series of recommended actions which, if followed, will give rise to a presumption of compliance. As currently constructed, however, the framework is overly weighted toward a single compliance path. As a practical matter, the draft Code offers RTSS providers two choices: either follow the Code to the letter and benefit from the safe harbour, or take the risk that they can justify "alternative actions" – through production of records – which will not be treated as automatically compliant. This latter approach would leave RTSS providers exposed to potential enforcement or adjudication throughout the life of their arrangements with PSBs. In our view, this structure risks making the Code the only truly viable route to compliance, which would render the Code akin to a mandate. RTSS providers under this approach may be loath to take the risk of pursuing alternative measures, even where RTSS providers and PSBs would otherwise be able to agree on Media Act-compliant solutions on a bilateral, commercial basis.

[Confidential – redacted]

In this context, Roku believes that the final Code and Guidance should make clear that compliance can be assessed at the level of the overall arrangements between RTSS providers and PSBs, rather than through a continuous, granular audit. We think Ofcom should adopt the following approach: **where an RTSS provider and a PSB conclude a bilateral agreement which both parties consider to be consistent with their statutory duties, that agreement should normally be treated as satisfying the parties' respective obligations under the Media Act and should create a strong presumption that the duties relating to appropriate prominence have been met, with Ofcom signaling a substantial reluctance to intervene.**

[Confidential – redacted] This would ensure that alternative approaches agreed between the parties can sit on the same footing as Code-based approaches, rather than being treated as permanently second-class or inherently suspect.

If Ofcom were not minded to adopt this presumption, it would need to be much clearer about how it intends to assess alternative actions in practice when a dispute is referred. The draft Code states that RTSS providers may seek to comply with their duties by taking alternative

actions, but it is not clear what criteria Ofcom will apply when judging whether such actions meet the statutory standard. It would not be appropriate for alternative approaches to be evaluated solely by reference to how closely they resemble the safe harbour recommendations. That would, in effect, mean that anything materially different from the Code is treated as suspect or non-compliant, so that the Code functions both as the guaranteed route to compliance and as the minimum acceptable standard. This would turn the safe harbour into a de facto floor as well as a ceiling and would undermine the very flexibility that the concept of “appropriate” prominence is meant to preserve. In our view, the presumption described above offers a simpler and more predictable route: Ofcom can rely in the first instance on arrangements that RTSSs and PSBs have themselves judged to be compliant, and only depart from that presumption where there is clear evidence that the Agreement Objectives are not being met.

In sum, our proposed clarification would preserve the parties’ incentives to reach bilateral agreements [Confidential – redacted]. This would help maintain a balanced allocation of rights and responsibilities between RTSS providers and PSBs, with Ofcom’s dispute-resolution role operating as a true backstop for use where parties are unable to reach agreement in the first place or where there is clear and objective evidence of a compliance problem.¹

Relative prominence and mixed compliance scenarios

The draft Code frequently frames prominence in relative terms between different PSBs. For example, in the context of primary content areas, RTSS providers that give different degrees of prominence to public service content belonging to each PSB are asked to have regard to the order of apps set out in the app menus recommendation. This raises practical questions where a platform follows the Code in relation to one PSB but adopts alternative compliance measures for another. By way of example, if an RTSS were to follow the Code in full for one PSB but rely on alternative actions for another PSB that both parties consider compliant with the Agreement Objectives, it is unclear whether Ofcom would nonetheless expect the RTSS provider to continue to apply the Code’s recommended relative prominence as between those PSBs. Without clearer guidance, there is a risk that the relative prominence provisions could, in effect, force RTSS providers to adopt the safe harbour for all PSBs simply to avoid creating apparent inconsistencies between PSBs. We would therefore invite Ofcom to explain how it envisages these relative prominence recommendations applying in mixed scenarios, and to confirm that choosing an alternative compliant path with respect to one PSB will not, in itself, be treated as a departure from the Code in relation to other PSBs where the safe harbour is followed.

Question 2: Do you agree with our proposals on app menus, and our assessment of their associated impacts? Please provide your reasoning, and if possible, any supporting evidence.

PSB apps being “available and immediately visible”

Roku supports Ofcom’s objective of ensuring that PSB apps are clearly visible and readily available as an important part of delivering appropriate prominence in accordance with the Media Act.

We are concerned, however, that the current drafting of the Code risks being interpreted too narrowly in terms of the implementation models that are deemed to satisfy the recommendation that PSB apps are “available and immediately visible” within the app menu.

¹ See Annex for editing suggestions.

The consultation document focuses on two illustrative approaches: pre-installation of PSB apps, and PSB app tiles being made visible on the home screen during set-up, which trigger automatic installation when first selected. Roku agrees that these are valid approaches, but considers it essential that the Code makes clear that they are only examples, and that other approaches also can benefit from the safe harbour.

Roku, for instance, has for many years followed an approach whereby users are presented with a list of apps when they first set up their device and can choose which apps to install as part of what we call the Initial Channel Selection (ICS) process. All PSB apps available via Roku currently are **pre-selected by default**, and while users remain free to deselect any app they do not wish to install, pre-selected apps otherwise will automatically be installed and included on the home screen as part of this ICS process. [Confidential – redacted] At the same time, this approach respects user choice and supports innovation in how users access and select apps, in line with the Agreement Objective that arrangements should not disproportionately restrict RTSS innovation. Under Roku’s approach [Confidential – redacted]. We therefore propose that the Code (1) explicitly recognise ICS-type flows, where PSB apps are set to be installed by default in the set-up process, as an additional example of how PSB apps can be made available and immediately visible; and (2) state clearly that the two examples currently given are not exhaustive.²

DIPS apps appearing in “each of the app menus”

Roku seeks clarification and narrowing of the recommendation that PSB apps should appear in “each” app menu on the user interface. Modern connected TV platforms increasingly use multiple user interface surfaces that serve different purposes. In Roku’s case, for example, the main app grid is complemented by discovery-focused rows such as “Your apps” or “Apps for you” within content discovery areas. These latter surfaces are intended to help users discover new or relevant apps, not to replicate the main app grid or to provide a structured view of all installed services. Applying the full set of app menu recommendations, including ordering and visibility rules, to every such surface would be disproportionate and would vastly diminish an RTSS provider’s ability to offer an effective and consumer-friendly discovery function.

We therefore suggest that the Code should specify that the safe harbour recommendation is satisfied where each designated PSB app is available and immediately visible in at least one main app menu or grid that users reasonably understand to be the primary place to access installed apps. By contrast, discovery rails and secondary surfaces should not be required to mirror the same ordering or to guarantee simultaneous visibility of all PSB apps. Similarly, where an RTSS offers more than one main app grid on the home screen, it should be sufficient for the PSB apps to meet the prominence recommendation in the primary app grid, rather than in every grid.³

[Confidential – redacted]

User customisation

Roku strongly supports Ofcom’s emphasis on user customisation and would welcome clearer recognition of its full scope. The draft Code refers to users being able to rearrange PSB apps within the grid, but is silent on the ability to delete or uninstall PSB apps. Our global business model is built on giving users control over their experiences, including the ability to remove any

² See Annex for editing suggestions.

³ See Annex for editing suggestions.

app they do not wish to keep on their device [Confidential – redacted]. This consumer-centric approach is also aligned with prominence frameworks in other jurisdictions, such as Australia, which specifically preserve the rights of users to uninstall any app, including apps that benefit from prominence rules.⁴

We therefore propose that the Code should be amended to state explicitly that RTSS providers remain free to allow users to customise their home screens and to rearrange and delete/uninstall PSB apps if they choose. Such an amendment would maintain the effectiveness of the prominence regime, while ensuring that users retain meaningful control over the composition and ordering of their app grids. It would also avoid creating inconsistencies with wider consumer protection objectives that prioritise user choice and customisation.

Taken together, these clarifications would preserve Ofcom’s policy intent while ensuring that the Code remains proportionate and compatible with innovative approaches such as Initial Channel Selection (ICS) [Confidential – redacted].⁵

Question 3: Do you agree with our proposals on primary content areas, and our assessment of their associated impacts? Please provide your reasoning, and if possible, any supporting evidence.

Public service content receiving “at least the same degree” of prominence as non-public service content

Roku supports the underlying objective of ensuring that PSB content is surfaced in a meaningful way within the primary content areas of RTSSs. At the same time, the way in which Ofcom’s proposals are framed in relation to “at least the same degree” of prominence across primary promotional areas and main disaggregated content areas risks being interpreted too broadly by PSBs, which would go beyond what is necessary to deliver appropriate prominence.

Roku believes that the consultation documents convey that the “same degree of prominence” does not mean a mechanical 50-50 split of space or time between public service and non-public service content in these areas, and that a range of factors – including the number of programmes, their position, the time of day and the way in which they are presented – will be relevant in assessing prominence.⁶ In other words, the “same degree” concept is intended to be a qualitative rather than a strictly quantitative assessment. We consider it important that this be clarified and reflected in the Code and any accompanying documents. Without such clarification, the phrase “at least the same degree” of prominence is likely to be read by some stakeholders as requiring a quasi-50% quota for PSB content in each key row and promotional surface, which would not reflect Ofcom’s stated intent.⁷

Inclusion of the “primary promotional area” within scope

Roku considers that the treatment of “primary promotional areas”, such as hero banners, requires particular care. The Media Act requires appropriate prominence for material that is

⁴ Australia Communications Legislation Amendment (Prominence and Anti-Siphoning) Bill 2023, Explanatory Memorandum, p.24: “For example, if a user moves or uninstalls a regulated television service from their device, the framework would not require the manufacturer to continue to afford that particular regulated television service prominence”.

⁵ See Annex for editing suggestions.

⁶ [Confidential – redacted]

⁷ See Annex for editing suggestions.

public service remit content; it does not, in our view, follow that monetised advertising inventory on the home screen should be brought within the scope of the prominence regime in the same way as app grids or content rails. [Confidential – redacted] Bringing this inventory within the Code’s “at least the same degree” test would constitute a significant and, in our view, disproportionate intervention in RTSS business models.

Regulatory intervention to require free prominence for PSB content in any monetisable advertising surface does not appear necessary to achieve Ofcom’s policy objective and risks undermining established commercial channels that are working effectively – both for PSBs and non-PSBs. [Confidential – redacted] Moreover, Ofcom’s suggestion in the consultation that any lost revenue from allocating advertising capacity to PSB content might be offset by “higher prices for the remaining placements” does not reflect the commercial reality of the UK advertising market. In practice, pricing for inventory is constrained by advertiser demand, campaign budgets, and competition from other media channels; simply reducing the available supply would not automatically translate into a commensurate increase in achievable prices. Even if some increase in prices were achievable at the margin, it would in practice mean asking commercial advertisers to subsidise the cost of additional free prominence for PSBs, with likely knock-on effects for marketing budgets and, in time, consumer prices. Using advertising markets in this way to underwrite regulatory objectives for PSBs appears to go well beyond what Ofcom’s remit is intended to encompass. We would therefore welcome clarification of the evidence and assumptions underpinning Ofcom’s view on this point, and would invite Ofcom to revisit its assessment of the opportunity cost for RTSS providers of bringing advertising inventory within the scope of the prominence regime.⁸

Question 4: Do you agree with our proposals on search, and our assessment of their associated impacts? Please provide your reasoning, and if possible, any supporting evidence.

Roku broadly supports Ofcom’s proposed approach to search, which in substance is a non-discrimination model. Search is primarily driven by the user’s own intent and input, and we agree that obligations in this area should focus on ensuring that PSB content is not deliberately disadvantaged when it is relevant to a user query, rather than mandating fixed outcomes or quotas that could undermine the usefulness of search for viewers.

In particular, we support paragraph A3.4 of the draft Code, which recognises that RTSS providers may take into account users’ past behaviour when determining relevance. Being able to use legitimate relevance signals – including viewing and search history, subscription status, language and genre preferences, and other behavioural indicators – is essential to providing search results that reflect both the user’s query and appropriate context. The final Code should preserve this flexibility and make clear that non-discrimination does not mean ignoring such relevance signals or prohibiting sponsored or promotional search placements, provided that PSB content is not the subject of unreasonable discrimination where it is genuinely the most relevant response.

We do, however, have reservations about paragraph 3.155 of the consultation, which suggests that RTSS providers should recognise Welsh-language metadata within their search functions. While we fully support the availability of Welsh-language content to those who wish to access it, Welsh-language programming remains genuinely niche and can be expected to be concentrated

⁸ If, notwithstanding these concerns, Ofcom were minded to keep hero banner / advertising surfaces within scope of the Code, it would be even more important to state clearly that “at least the same degree” of prominence does not imply a mechanical 50:50 split of space or time between PSB and non-PSB content.

in a small number of services such as S4C. Building and maintaining system-level support for Welsh-language metadata and search on a non-regionalised platform would therefore be disproportionate compared to the likely volume of usage and would add complexity for all users. A more proportionate approach would be for the relevant regional PSB app to ensure that its own in-app search and navigation work effectively in Welsh, so that Welsh-speaking users can find content in their language within that service, while the platform-level search remains focused on delivering accurate and non-discriminatory results based on the main language settings and behaviour of the user base as a whole.⁹

Question 5: Do you agree with our proposals on listed channels, and our assessment of their associated impacts? Please provide your reasoning, and if possible, any supporting evidence.

Roku recognises the importance of the PSB linear “listed channels” in the UK broadcasting landscape and understands why Ofcom wishes to ensure that such channels are treated appropriately within RTSS live TV areas. However, we consider that the draft proposals in relation to listed channels require refinement to align more closely with the wording and intent of the Media Act, the realities of different RTSS designs, and user expectations.

As a starting point, Roku recalls the statutory language that prominence is required only “so far as the prominence of that [...] channel is capable of being affected by the operation of the regulated television selection service”. In our view, this makes clear that the duty arises only where the RTSS *already* carries a particular listed channel in a live TV area and is therefore actually capable of affecting its prominence. Where a listed channel is not carried in any live TV area, the RTSS has no means of affecting its prominence and no such duty can arise. Viewed otherwise, Ofcom would in this context be interpreting the Media Act to be creating some kind of “Must Include”/ “Must Carry” obligation for linear channels in the RTSS context. This would be fundamentally unfair, [Confidential – redacted].¹⁰

[Confidential – redacted]

Where an RTSS already operates an EPG-like live TV area that includes PSB linear channels, Roku accepts that prominence obligations will apply. In this scenario, we support Ofcom’s clarification that the new regime does not extend to “regulated EPGs” already subject to their own PSB prominence rules, and we welcome the statement that a listed channel need not appear more than once in a live TV area. That principle should be maintained and, in our view, mirrored in other parts of the Code (for example, in relation to app menus) to avoid unnecessary duplication. In instances where unregulated live TV lists do include listed channels, it would be reasonable to expect RTSS providers to ensure that those channels are given appropriate prominence relative to other linear services, taking into account each RTSS’s own specific design of its live TV environment.

Question 6: Do you agree with our proposals on attribution, and our assessment of their associated impacts? Please provide your reasoning, and if possible, any supporting evidence.

Roku broadly supports Ofcom’s proposals on attribution. We agree that RTSS providers should have flexibility in how they implement the attribution recommendations, and we also agree with

⁹ For the avoidance of doubt, our objection is to a blanket, Code-level directive on all RTSSs to implement system-wide Welsh-language search support. [Confidential – redacted].

¹⁰ See Annex for editing suggestions.

the recommendation that PSBs provide the necessary programme metadata and branding assets at zero cost so that RTSS providers can meet these obligations in practice.

Question 7: Do you agree with our proposal on alternatives to visual information, and our assessment of its associated impacts? Please provide your reasoning, and if possible, any supporting evidence.

Roku has no comments on this proposal.

Question 8: Do you agree with our proposal on text and image enlargement, and our assessment of its associated impacts? Please provide your reasoning, and if possible, any supporting evidence.

Roku has no comments on this proposal.

Question 9: Do you agree with our proposal on distinguishable text and images, and our assessment of its associated impacts? Please provide your reasoning, and if possible, any supporting evidence.

Roku has no comments on this proposal.

Question 10: Do you agree with our proposal on information on accessibility features, and our assessment of its associated impacts? Please provide your reasoning, and if possible, any supporting evidence.

Roku has no comments on this proposal.

Question 11: Do you agree with our proposal on labelling of accessible content, and our assessment of its associated impacts? Please provide your reasoning, and if possible, any supporting evidence.

Roku supports the aim of ensuring that users with disabilities can identify whether programmes offer subtitles, audio description, signing, or other forms of assistance where the RTSS has reasonable access to reliable metadata. However, we have reservations about the way this recommendation might operate in some contexts. In particular, requiring the UI to display detailed accessibility labels for each instance of a programme in aggregated areas such as Search, where results may show users that the same title is available from multiple apps, risks creating an overly complex and cluttered interface. It also risks confusion or inaccuracy, particularly since different apps may not all have the same accessibility options for the same content titles. For example, the same programme might have subtitles available in one app, subtitles and audio description in another, and a different combination in a third. It would not be reasonable to compel an RTSS to label all of those distinctions within a single results screen.

We also note that the Media Act's forthcoming accessibility regime for Tier 1 VoD services will itself require a progressive increase in the proportion of catalogues that carry subtitles, audio description, and signing. In practice, this means that larger VoD apps will over time be required to provide access services for the majority of their catalogues, irrespective of how content is surfaced on RTSSs. Against that backdrop, imposing detailed, cross-app labelling obligations on RTSS providers risks offering limited incremental benefit to users relative to the underlying obligations on Tier 1 providers, while adding significant complexity to RTSS UIs. In our view, the final Code should recognise this interaction and ensure that any RTSS-level labelling

expectations remain lighter-touch and targeted, encouraging clear and meaningful labelling where it is reasonably implementable and where it genuinely helps users, rather than duplicating what will already be required at the app level.

Question 12: Do you agree with our proposal on enabling use of the available accessibility features, and our assessment of its associated impacts? Please provide your reasoning, and if possible, any supporting evidence.

Roku has no comments on this proposal.

Question 13: Do you have any views or evidence on the effectiveness or impact of any other actions in relation to making use of the RTSS and finding/making use of accessible programming? Please provide your reasoning, and if possible, any supporting evidence.

Roku has no comments on this proposal.

Question 14: Do you agree with our proposed draft Guidance, and our assessment of its associated impacts? Please provide your reasoning and, where relevant, any supporting evidence.

Roku supports the overarching aim of the draft Guidance on Agreement Objectives of ensuring that arrangements between RTSS providers and PSBs both deliver appropriate prominence and preserve room for innovation and commercial negotiation. Given the pace of change in connected TV interfaces and business models, it is crucial that the Guidance is applied in a way that allows RTSS providers to continue evolving their UIs and product features, while meeting their statutory duties, in line with the objective that arrangements “must not disproportionately restrict how RTSS providers innovate in the ways that users access and select IPS or programmes”.

We also broadly support Ofcom’s approach to payments and value transfer. It is sensible to identify “core terms” – that is, terms reasonably necessary to meet Must Offer/Must Include (MOMI) and prominence obligations – and to state that these should generally not attract payments. We agree that these core terms include the provision, by PSBs, of programme metadata and branding assets needed for prominence and attribution, alongside the mutual technical work required to integrate and maintain PSB apps on RTSS platforms. In our view, the draft Guidance correctly treats such metadata and attribution assets as core inputs that PSBs should supply at zero cost, so that RTSS providers can comply in practice with any obligations they may incur under the Code of Practice.

At the same time, we consider it important that the Guidance draws a clearer line between these core terms and “additional terms” that may legitimately be subject to commercial negotiation and payment. In particular, we would welcome more explicit recognition that requests for prominence or promotion that go beyond what is necessary to deliver “appropriate” prominence – for example, additional placement in premium promotional inventory such as hero banners, or enhanced app or content placement over and above the baseline established in the Code – should normally be treated as additional terms. [Confidential – redacted] We think it would be helpful if Ofcom confirmed, through examples, that only the prominence sufficient to meet the statutory standard is core, and that any prominence over and above that level falls within the realm of additional, negotiable terms.

We also encourage Ofcom to address explicitly the question of which technical specifications should apply when implementing “core” technical terms. Roku’s standard practice is to require IPS providers to build their apps in accordance with Roku’s own Software Development Kit (SDK). [Confidential – redacted] We note that in other jurisdictions, such as Australia, the explanatory materials for prominence regimes explicitly contemplate that obligations apply only when a content provider is willing to develop its app consistent with the platform’s technical specifications, so that must carry or prominence duties remain workable in practice.¹¹ We consider that Ofcom’s Guidance should similarly acknowledge that it will generally be reasonable – and consistent with the Agreement Objectives – for RTSS providers to require PSBs to develop their apps in line with the RTSS’s standard SDK or technical specifications, rather than expecting platforms to adapt to each PSB’s preferred architecture. For clarity, this would not prevent app owners and RTSS providers from agreeing, through commercial negotiation, to support bespoke technical solutions in particular cases; but where that happens it should be the outcome of bargaining, not a unilateral attempt by an app owner to insist on bespoke integration as a condition of must carry or prominence.

Question 15: Do you agree with the assessment of the combined impact of our proposals when considered as a package? Please provide any relevant evidence that supports your position.

We refer Ofcom to our response to question 1, above.

Question 16: Do you agree that 12 months is a reasonable period for all providers to bring themselves into compliance? Please provide your reasoning, and if possible, any supporting evidence.

Roku recognises Ofcom’s desire to move quickly to implement the new prominence and accessibility regime. However, we do not consider that a 12-month implementation period from publication of the final Code and Guidance is realistic for global, multi-device RTSS providers. [Confidential – redacted] For platforms that operate across multiple device generations and OEM integrations, these changes must be carefully designed, implemented, tested and certified, and rolled out in phased software releases, often as part of annual or longer update cycles. No party – not Ofcom, not the PSBs, and certainly not RTSS providers who fiercely value their relationship with users – wants to see a scenario in which a feature is rushed to market only to have bugs, errors, or app failures.

Against that backdrop, Roku considers that a minimum of 18–24 months from publication of the final Code and Guidance would be a more realistic and proportionate implementation period for the full package of prominence and accessibility measures. This would allow sufficient time to plan and deliver the necessary changes across diverse device portfolios and markets, while still ensuring that users see meaningful improvements within a reasonable timeframe.

¹¹ Australia Communications Legislation Amendment (Prominence and Anti-Siphoning) Bill 2023, Explanatory Memorandum, p.26: “[...] for a regulated television service to be taken to be offered, it must meet minimum technical specifications for integration into the software used on a regulated television device. Without this requirement, it may be unworkable for manufacturers to comply with the must carry obligations [...]”

ANNEX – language refinement suggestions

This Annex sets out concrete drafting suggestions to refine Ofcom’s draft Code of Practice and Guidance on Agreement Objectives. For each suggestion, we indicate the relevant provision, the current wording, and our proposed alternative.

Where the same concept is also discussed in the consultation document, we include a brief cross-reference to the relevant paragraph(s), indicating that the consultation narrative should be updated for consistency. For issues that only arise in the consultation (and do not require Code/Guidance changes), we provide a short note against the consultation paragraphs directly.

Question 1

Document: Draft Code

Location: Introduction, 1.9

Current wording: Providers may seek to comply with their duties by taking alternative actions. Where they take alternative actions, we advise providers to maintain a record of what they have done and how they consider it meets the relevant duties.

Proposed wording: Providers may seek to comply with their duties by taking alternative actions, [including through bilateral arrangements between providers of regulated television selection services and public service broadcasters that both parties consider to be consistent with the Agreement Objectives. Where such an arrangement is in place, Ofcom will presume that the parties’ respective duties relating to the Media Act have been met, and Ofcom will be highly reluctant to intervene absent clear and objective evidence to the contrary. The party claiming that a bilateral arrangement is insufficient shall bear the burden of demonstrating why Ofcom should intervene.](#)

Consultation cross-reference: Paragraph 3.23

Question 2 (i)

Document: Consultation

Location: Paragraph 3.53

Current wording: In order to meet this recommended action, RTSS providers should ensure that each of the DIPS apps are available within the relevant app menus. This would typically mean DIPS apps being pre-installed or displayed as a tile which causes the app to download when users first click on it. We understand that most TSS providers already do this for a selection of third-party apps in some manner, but there is a small number of TSS providers that do not necessarily make apps available in the app menu by default, instead displaying a list of third-party apps for the user to select to download when the device is first set up. RTSS providers should take any necessary steps to ensure that the DIPS apps are available and immediately visible within the app menu in accordance with the recommendation.

Proposed wording: In order to meet this recommended action, RTSS providers should ensure that each of the DIPS apps are available within the relevant app menus. [Typical examples include](#) DIPS apps being pre-installed or displayed as a tile which causes the app to download

when users first click on it. We understand that most TSS providers already do this for a selection of third-party apps in some manner. [Other approaches may equally satisfy this recommendation, for example where PSB apps are pre-selected for download by default as part of the device set-up process.](#) RTSS providers should take any necessary steps to ensure that the DIPS apps are available and immediately visible within the app menu in accordance with the recommendation.

Comment: Roku is included (in footnote 77) as an example of a provider that displays “a list of third-party apps for the user to select to download when the device is first set up”. This is not a fully accurate description. While for most apps, the user must affirmatively select it for download, all PSB apps currently available via Roku are pre-selected for install by default, [Confidential – redacted].

Question 2 (ii)

Document: Draft Code

Location: A1.2

Current wording: Where a designated internet programme service is included in the regulated television selection service as an app (a designated internet programme service app”), the provider should include that app in each of the app menus.

Proposed wording: Where a designated internet programme service is included in the regulated television selection service as an app (a designated internet programme service app”), the provider should include that app in the [primary](#) app menu.

Consultation cross-reference: Paragraph 3.48.

Question 2 (iii)

Document: Draft Code

Location: A1.6

Current wording: Nothing in this recommendation A1 should prevent users from deciding the order of internet programme services included as apps (including the designated internet programme service apps) in each app menu.

Proposed wording: Nothing in this recommendation A1 should prevent users from deciding the order of internet programme services included as apps (including the designated internet programme service apps) in each app menu, [or from customising their home screen, including deleting or uninstalling any apps if they choose.](#)

Consultation cross-reference: Paragraphs 3.62, 3.81

Question 3

Document: Consultation

Location: Paragraph 3.118

Current wording: Our proposal is that, collectively, public service content should receive at least the same degree of prominence given to other content. RTSS providers should give this degree of prominence across the primary content areas taken together. Recognising that primary content areas are dynamic, it may be that public service content is given a relatively low prominence (or none) in one primary content area but relatively high prominence in another, and that the degree of prominence given in different primary content areas changes over time. This would be acceptable as long as the recommended degree of prominence is achieved across the primary content areas overall. RTSS providers should also decide on an appropriate period over which they measure prominence to ensure they are following our recommendation, though we would advise providers to keep records to ensure they can demonstrate compliance.

Proposed wording: Our proposal is that, collectively, public service content should receive at least the same degree of prominence given to other content. RTSS providers should give this degree of prominence across the primary content areas taken together. [We do not intend this to imply a mechanical “50:50” split of space or time between public service and non-public service content in these areas; rather, the focus is on ensuring that public service content is not systematically disadvantaged.](#) Recognising that primary content areas are dynamic, it may be that public service content is given a relatively low prominence (or none) in one primary content area but relatively high prominence in another, and that the degree of prominence given in different primary content areas changes over time. This would be acceptable as long as the recommended degree of prominence is achieved across the primary content areas overall. RTSS providers should also decide on an appropriate period over which they measure prominence to ensure they are following our recommendation, though we would advise providers to keep records to ensure they can demonstrate compliance.

Question 5

Document: Draft Code

Location: A4.3

Current wording: Subject to action A4.4, where the following listed channels are included in the designated internet programme services, the provider should ensure that they are presented as follows in each live TV area: [...]

Proposed wording: Subject to action A4.4, where the following listed channels are included in the designated internet programme services [and are otherwise carried in a live TV area on the regulated television selection service](#), the provider should ensure that they are presented as follows in each live TV area: [...]

Consultation cross-reference: Paragraph 3.178