

Consultation response form

Your response

Introduction

I advise a number of Ofcom licensees on compliance matters and regulatory affairs. This submission represents the views of a range of broadcasters spanning news, factual, sports and general entertainment genres. I have structured the response in three parts, taken from the Ofcom Overview.

Licensing

Focussing on the commercial broadcasters, the sector wholeheartedly agrees with Ofcom's statement that the licensing framework for broadcasting requires fundamental reform. Ofcom's research shows that the majority of households have smart TVs and viewers access content via unregulated and internet-delivered channels. Noting that Ofcom's remit is to encourage competition and growth whilst protecting viewers from harmful content, the sector wishes to deter Ofcom from taking a policy of levelling-up the licensing regime to a level-playing field. This will have the effect of stifling competition and growth in the absence of evidence of actual harms being disseminated by the IP channels. Consumers are very media literate in matters of digital technology and favour choice over market intervention from regulation.

The mindset of 'level playing field', often welcomed by politicians, does not reflect the dynamics of the market or serve the consumer. There is already much confusion in the sector (e.g. OTT and FAST) as to whether Ofcom licences are required on streaming platforms which have replaced the traditional set-top box delivery, such as Sky Stream, Virgin Stream etc. The service present a playlist of programmes to viewers and appear to meet the definition of 'regulated EPG'. In the short term, the sector would welcome clarification on what constitutes a regulated EPG. Since submitting this earlier I have learnt that EPGs created post the Brexit transition period do not fall under Ofcom's jurisdiction which creates a very confusing patchwork for consumer and business. I appreciate it is in the hands of the Secretary of State and not Ofcom to make such designations. That said, the market needs clarity and assurance in future policy.

I would also like to flag another licensing conundrum connected to the UK leaving the EU and that is licensing or notification of services that broadcast on a regulated EPG in both the UK and the Republic of Ireland. The Ofcom TLCS covers the UK territory but a number of services appear to be relying on the ECTT without any formal notification in that jurisdiction. In addition, these services may not meet the establishment criteria in the country. Perhaps this is a matter for the Irish regulatory authority and not Ofcom but the current practice opens the door for more channels

operating, seemingly by circumventing the spirit and letter of the licensing rules affecting the UK and the EU.

Advertising

The summary to this section points to a review of COSTA and the amount and placement of advertising. This also brings into play the Cross-Promotion Code (cutting across Content Standards) because consolidation in media groups, such as those that span news/ents/movies), want to be able to crosspromote their movies on ent/sports channels without fear of exceeding advertising minutage. Greater flexibility would be welcome here.

Content Standards

The market is very keen to engage with Ofcom's new Video on Demand code and has been frustrated by the delays in launching the consultation process. In the meantime, many new VOD services have been launched based on the existing regulatory framework and may be faced with more onerous rules which could hinder growth. Ofcom states that *"we need rules that apply fairly to content wherever it's shown, that work alongside the Online Safety regime and that keep audiences safe. We will explore how to do this without compromising on the critical standards set out in the Broadcasting Code."* This implies a form of level-playing-field thinking and raising the bar of consumer protection for VOD, then OTT and FAST. We suggest that Ofcom needs to be more ambitious in its thinking, perhaps using citizens' juries to measure consumer expectations of content restrictions and understanding what standards are proportionate given the technical tools available to consumers on their connected devices.

For the commercial broadcasters, licensees have been waiting for over a year for Ofcom to issue updated programme guidance on Section 9 Commercial References in TV. It was last issued in 2016 and is not relevant to today's media landscape. Many commissions in factual genres have not been able to engage sponsorship due to concerns that the editorial would be classed as Current Affairs and thus not acceptable for sponsorship. Ofcom's Broadcast Bulletin of 285 issued in 2015 set a clear marker to industry on how wide Current Affairs could be defined. The market desperately needs clarification on this, for instance would a sustainable house build programme involving policy contributors be classed as Current Affairs? When does environment and technology-related shows become defined as Current Affairs or education/science?

Finally, the use of AI in content compliance is being developed and promoted to licensees. What is Ofcom's view on the application of AI in delivering compliance and to what degree human review is considered fundamental to ensuring compliance of content? We appreciate you do not prescribe how licensees fulfil compliance but guidance in this developing sector would be welcome.

Apologies for the somewhat telegraphic nature of this submission. I look forward to engaging in the process as it develops.