

Consultation response form

Your response



Content standards for platform media.

The shift towards platform media presents a major challenge for the regulation of content. Much of the current debate has focussed on the influence of online harms. As public service *broadcasting* becomes public service *media*, a major challenge exists for PSBs in terms of the regulatory demands currently placed upon them in an environment where they are now increasingly competing with non-PSB platform content which is not subject to the same standards. Our submission concentrates on the impact for policy on the Broadcasting Code stemming from insights from our 3-year UKRI-funded project **ReCARETV: Reality television, working practices and duties of care**. It emphasises that the evolution of content regulation must continue to build on recent advancements concerning the welfare of contributors, and that equity, fairness, and protection from harm must be at the heart of *all* media production.

1. In the current situation around duties of care, broadcasters voice some frustration with competing with streamers, as they are held to standards that the streamers currently are not. In our research, broadcasters clearly feel that this creates an **uneven playing field** whereby they are bound to the stricter rules of the Broadcasting Code.
2. The Media Act suggests that 'Tier 1' VoDs will become subject to the Broadcasting Code. One issue here is that 'Tier 1' does not capture all streamers and will therefore introduce another level of distinction between those subject to the Code and those that are not. There will be a challenge to **enable a level playing field** for those stakeholders that wield a similar amount of power and resource *and* acknowledge **distinctions in content production** across the landscape.
3. Upholding standards of regulation will present some problems, especially if responses to breaches of the Code in terms of offense or fairness are largely co-ordinated through the **current Ofcom complaints procedure**. One challenge will be how audiences understand

their rights to complain about *which* services. This is further complicated by the same content being available across more than one service. It is clear that any new regulatory framework should be sense-checked and communicated clearly with audiences.

4. Our primary concern through the ReCARETV project has been in terms of the **new duty of care regulation and guidelines** that were introduced into Section 7 (Fairness) of the Broadcasting Code in 2021. In the past, the Code has largely sought to protect audiences from harm under Section 2 (Harms) while those that take part in production had some protection under section 7 (Fairness). In 2021 the addition of new guidelines in Section 7 opened up a space for lay participants across TV and radio to be treated with 'due care'. This updated focus on the welfare of contributors has been new territory for Ofcom outside U18s; however, our research suggests that complaints made under this section of the Code are extremely unlikely to be upheld, partly because of the way in which the framework has been developed with compliance departments within the broadcasters. Our research with participants reveals that they find it very difficult to have their cases heard, and most are dismissed as 'not entertained'. It raises the issue about whether this is the right place for participants in radio and television to complain about their treatment in the sector. As such, there is an opportunity for the **regulation of content to evolve, with equity and fairness at its heart**.
5. At present digital content creators are able to produce **unscripted content that evades the standards of 'due care'** in the Broadcasting Code which seek to protect participants from exploitation or harm. For instance, *Badderz UK*, on YouTube, is an online reality programme, distributed through platform media, which deliberately frames itself as free of the constraints of 'due care' to attract audiences. In a new context, regulatory frameworks need to evolve to reflect the different spaces in which content is produced, and professionally-produced content for platform media needs to be subject to the same rules for contributor welfare as for broadcasters.
6. If the principle as set out above is followed, 'we need rules that apply fairly to content wherever it's shown', then potentially **all digital content production** should show 'due care' to all participants. This potentially applies to all digital content creators even beyond Tier 1 streamers. Obviously, smaller organisations and individual content creators will not have access to the larger compliance and legal departments that broadcasters and streamers employ. This has clear implications for their ability to firstly ensure they are compliant and secondly to respond appropriately to any complaints. It seems clear that there are going to need to be **new categories of content**, that reflects and can respond to the contexts and nature in which content is produced, to which different standards apply, all whilst holding on to key ethical principles about harm and offense. We propose some consideration of extending a 'risk matrix', which takes into account genre, platform and participant consent, in a reconfiguration of content standards for the platform context.
7. If the space for Ofcom's complaints process is to extend across content – including VoD's and beyond - how is Ofcom going to cope with, and be transparent about, the **volume of potential complaints** to be made? Having spent time looking at the complaints process as it stands, it suggests that this will be extremely difficult. Ofcom will clearly need new mechanisms and new resource to manage the regulation of an expanded content universe which includes short-form. As the PSBs increasingly move into short-form a mechanism for sharing

good practice would be useful which may involve interaction with other bodies such as CIISA.

8. It is very important that just because the landscape is complex that **Ofcom does not retreat from the challenge to regulate content standards**. Platform standards and community rules clearly need to be regulated and to some extent standardised. As is becoming clear, decisions will need to be made between different types of content and different levels of standard regulation and the monitoring of compliance. There is a further dimension around where the level of responsibility lies with the platform or content producer? Currently broadcasters are held responsible for content commissioned by them from production companies. The equivalent of holding platforms responsible for duty of care in content would be extremely challenging and this means that those similar considerations that are in the Online Harms Bill will need to be thought about with regard to any new content legislation.
9. Reality television is made more exciting by its intersection with social media, whilst its participants are increasingly subject to scrutiny. A 'villain' edit can induce significant amounts of online hate for participants, and this is most acute for women and people of colour. The online safety act recognises that broadcasters need to consider the welfare of participants whose participation will attract considerable social media attention. **But Ofcom also needs to make platforms more alert to protecting participants in transmission time**. Our research shows that broadcasters get varying levels of response from different platforms when trying to alert them to damaging or hateful content that is being posted online.
10. Ofcom's principles have historically been determined by holding together the 'citizen-consumer' and it created the Content Board to oversee issues around its responsibility to the 'citizen' that are related to the quality of content. The **Content Board will need considerable expansion** if it is to oversee the new landscape. At present we suggest that the dominance of ex-broadcasters on the board already does not represent the constituents that the broadcasting code works to protect, especially as it has moved into questions of 'due care' to participants. In the future this also includes digital content creators, streamers and platforms but it seems obvious that also audiences and user groups as stakeholders should have representation. We would recommend a reconstructed board – or even a number of boards - to reflect the fragmentation of the landscape.
11. If individual **content creators** are to become subject to some type of content code of practice, then there is going to need to be more resources and guidance for them to support this. Given the revenues digital content creates for platforms this could be supported by a body funded by the platforms.
12. In terms of **duty of care there is clearly a case for some more globalised and joined up policy initiatives**. The changes to the Broadcasting Code brought out under 'due care' in 2021 have become embedded across many (though not all) independent production companies which also produce content for streamers. Currently UK broadcasters and independents are leading the way in this field and sharing learning when undertaking commissions for streamers, including in the area of True Crime. Ofcom could lead the way in setting up some international standards in this area. However, commercial pressures currently being experi-

enced under the current slow-down are also putting pressure on care and whilst not yet subject to the code, streamers - in some cases with much larger budgets - can be more responsive to resourcing duty of care. It would be a shame if the pressure on PSBs in the current slow-down were to undo some of the important progress made in this area. There is evidence in some cases of a tension in duty of care **in response to falling budgets**. By levelling the playing field and igniting an international conversation, Ofcom and PSBs could provide the global gold standard in this area, continuing the UK's world-leading legacy of the highest standards in content production.

13. There may be a case for the **duty of care guidelines to be revisited in the context of platform media and AI**. Regulating for AI content and the re-use of images should now become a key area of concern for Ofcom. One issue that emerges from our data is that participants, often keen to be included in TV programming, sign away their rights in contracts 'across the universe and on any media yet to be invented.' This standard phrase in contracts was perhaps once fit for purpose in a legacy media landscape (although it still clearly disadvantages the individual), but in such a diffuse platform model with the new scope of AI this clearly presents a danger of exploitation of citizens who participate in media. This is clearly an area that needs to come into Ofcom's purview. This will also need some more considerable research and learning in collaboration with European legislation around the right to be forgotten.
14. AI is currently being used to generate new reality shows with entirely AI generated characters. For instance, in one show on YouTube characters fight in a Hunger Games style fight to the death. Obviously, this needs careful monitoring under the online harms bill and some potential **warning markings for AI generated content**.
15. The media industries and TV and Film still **notoriously lack diversity** as much of the evidence continues to show e.g. [Report Equity, Diversity and Inclusion in Broadcasting](#). Yet the proposals under the Media Act will not require Tier 1 to report on diversity data in the same ways that the PSBs are currently required to do under Project Diamond. Under this evolving landscape, understanding and continuing to reflect diversity is important. Our spin-off research has shown racism, bullying and racial inequality still exist, especially at senior level, despite the many entry-level initiatives. [Black in Focus. Black professionals' experiences of career progression in the UK TV Industry](#). Again, this is going to need some thought and research about the future of diversity initiatives and the reporting mechanisms in the platform media landscape.
16. Finally, our research has been taking place at a moment in time where there has been considerable pressure on the TV industry during the period of slow-down and rising costs. We are concerned that the **UK's leading place on the global stage in TV content is under threat**, and the position of the PSBs to produce world-leading and ground-breaking content is being placed at risk. Under the Media Act removing quotas may lead to PSBs narrowing its offer and over time we may see a shrunken PSM provision of the type of content (scripted, unscripted, regional and arts) for which the UK has a global reputation. Right now, this is an industry that, as Bectu and the Film and TV Charity continually show, is under serious pressure, with its workers under considerable mental strain. The slowdown is exacerbating a system that was already unfair to its workers. **Ofcom should make repairing this industry a priority in preparing a policy landscape for the future**. We want to see UK TV sustain its place

with world-leading and equitable practices around duty of care, and improved working conditions for crew as well as participants. Pressure on budgets could see a further intensification of the industry crisis and we want to see the PSBs supported into the future. Whilst this might be a wider issue for the DCMS – the consideration of a levy on streamers, as has been implemented in France - is one way forward. The case for this is surely even stronger as audiences move to IPTV when the advantages of prominence that are currently protected under DTT and satellite provision come into question.

We have tried to be brief but are more than happy to discuss these issues further.

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