

*Championing  
excellence and diversity  
in broadcasting*



Founded in 1983 by Jocelyn Hay CBE

The Old Rectory Business Centre  
Springhead Road, Northfleet  
Kent, DA11 8HN  
Tel: 01474 338716  
email: [info@vlv.org.uk](mailto:info@vlv.org.uk)  
VLV: [www.vlv.org.uk](http://www.vlv.org.uk)

## **VLV RESPONSE TO DCMS CONSULTATION ON AUDIENCE PROTECTION STANDARDS ON VIDEO-ON-DEMAND SERVICES**

**October 2021**

## INFORMATION ABOUT THE VLV

1. The Voice of the Listener & Viewer (VLV) is an independent, not for profit membership-based charity, free from political and sectarian affiliations. VLV supports high quality broadcasting which maintains the democratic and cultural traditions of the UK. We support the independence and integrity of the BBC and encourage work which demonstrates commitment to the principles of Public Service Broadcasting (PSB). VLV is a charitable company limited by guarantee (registered in England and Wales No 4407712 - Charity No 1152136).

## EXECUTIVE SUMMARY

2. VLV supports the government's stated aim to ensure 'UK audiences receive a similar level of protection no matter how they watch their favourite television - whether it be live or on-demand'<sup>1</sup>.
3. VLV welcomes the increased choice provided by VoD services, however we are concerned by the the lack of regulation of these services which increases the risk of potential harm to audiences and allows the VoD services to operate without having to meet the same high content and audience protection standards as UK broadcasters. This also provides them with an unfair competitive advantage in the market.
4. VLV is concerned that many citizens are vulnerable when watching content on VoD services because they are not aware of the different 'levels' of regulation which apply to different platforms and types of media. This means they are unlikely to be aware that when they watch factual content on VoD platforms, for example, such content is not regulated for accuracy in the same way as it is on linear TV. The discrepancy between regulation of live TV and regulation of VoD content (except for the BBC iPlayer) has significant implications for society at a time when the government is aiming to reduce levels of disinformation to which citizens are exposed.
5. VoD services not currently regulated in the UK should be brought within UK jurisdiction because it would be beneficial for audiences if regulation is consistent across VoD and broadcasting platforms.
6. Additional obligations should apply to all VoD services to improve the safeguarding of audiences. VLV believes that VoD services should be regulated under the Broadcasting Code. VLV is concerned that audiences should not be exposed to content which is harmful, whether that is because it is inaccurate, incites crime, includes extremist religious views, or is included in a news or current affairs programme and is not impartial. There is also a clear risk to UK democracy if VoD are services not regulated for due impartiality during periods when elections or referenda are being held. Additionally, VLV believes that producers of content for VoD platforms should be bound by the Fairness and Privacy rules of the Broadcasting Code to avoid unjust or unfair treatment of individuals and organisations.
7. All elements of the Broadcasting Code should apply to all VoD service because if regulation is only applied to certain services and not others, this will be confusing for

---

<sup>1</sup> *Audience protection standards on Video-on-Demand Services* Consultation, DCMS, 31 August 2021.  
<https://www.gov.uk/government/consultations/audience-protection-standards-on-video-on-demand-services/audience-protection-standards-on-video-on-demand-services>

audiences and they will not be able to be confident that what they are watching is safe and accurate.

8. VLV considers that the current protection tools used by the VoD services do not provide a sufficient level of protection for audiences because they are inconsistent between different platforms which is confusing for audiences. This lack of standardisation means that VoD services do not provide the same level of protection as is afforded by linear TV.
9. While VLV acknowledges that imposing additional regulatory requirements will result in additional costs for the VoD services and that these may be passed onto subscribers, VLV considers that these additional costs are unavoidable if the government is to achieve its goal to ensure that UK audiences receive a similar level of protection no matter how they watch TV-like content.

## INTRODUCTION

10. In responding to this consultation VLV is concerned with the impact any changes to the regulation of VoD services will have on audiences and, more widely, on citizens in the UK.
11. VLV supports the government's stated aim to ensure 'UK audiences receive a similar level of protection no matter how they watch their favourite television - whether it be live or on-demand'<sup>2</sup>.
12. VLV notes that the number of households which subscribed to a VoD service rose almost 350% between 2014 and 2020<sup>3</sup> and that in 2021 over 75% of households say they have used at least one VoD subscription service<sup>4</sup>.
13. VLV notes that 'most VoD services either aren't regulated to the same extent as traditional UK linear television channels, or they aren't regulated in the UK at all'<sup>5</sup>.
14. Whilst the increase in choice provided by VoD services is of benefit to UK audiences, the lack of regulation of these platforms increases the risk of potential harm to audiences and allows them to operate without having to meet the same standards as UK broadcasters which provides them with an unfair competitive advantage in the market.
15. VLV has argued consistently in recent years that UK citizens would benefit from platform neutral regulation of TV-like content, both to protect citizens and to ensure a level commercial playing field between VoDs and UK broadcasters. VLV is concerned that many people are not aware of the different 'levels' of regulation which apply to different platforms and types of media. This means they are unlikely to be aware that when they watch factual content, for example, on VoD platforms, such content is not regulated for accuracy in the same way as it is on linear TV. This discrepancy between regulation of live TV and regulation of VoD content (except for the BBC iPlayer) has significant implications for society at a time when the government is aiming to reduce levels of disinformation which citizens are exposed to.

---

<sup>2</sup> Audience protection standards on Video-on-Demand Services Consultation, DCMS, 31 August 2021.

<https://www.gov.uk/government/consultations/audience-protection-standards-on-video-on-demand-services/audience-protection-standards-on-video-on-demand-services>

<sup>3</sup> <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/medianations-reports/media-nations-2021/interactive-report>

<sup>4</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/222890/media-nations-report-2021.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/222890/media-nations-report-2021.pdf)

<sup>5</sup> Audience protection standards on Video-on-Demand Services Consultation, DCMS, 31 August 2021.

<https://www.gov.uk/government/consultations/audience-protection-standards-on-video-on-demand-services/audience-protection-standards-on-video-on-demand-services>

16. Therefore VLV welcomes and supports the government's view that 'we need a level playing field between traditional broadcasters and online streaming services'<sup>6</sup> and welcomes that 'the government is minded to align better the rules between VoD services that provide a TV-like experience and 'traditional' linear TV, ensuring UK audiences receive a similar level of protection no matter how they want to watch television.'<sup>7</sup>

## CONSULTATION QUESTIONS

### Jurisdiction

#### **Q1 - Should VoD services not currently regulated in the UK be brought within UK jurisdiction? Yes/No? Please explain your reasoning.**

17. VLV believes that VoD services not currently regulated in the UK should be brought within UK jurisdiction because it would be beneficial for audiences if consistent regulation applied across VoD and broadcasting platforms.

18. VLV notes that Netflix and Apple TV+, two significantly popular platforms in the UK, are not regulated in the UK at all.

19. VLV considers the benefits of bringing VoD services which are not currently regulated in the UK within UK jurisdiction include:

- Better safeguarding of audiences with regard to disinformation
- Better protection for children
- Reducing the competitive disadvantage between UK broadcasters and VoD platforms
- Less reliance on third party regulation in other countries which may differ from UK regulation and may not be as robust or appropriate for British audiences.

#### **Q2 - If non-UK VoD services are brought within UK jurisdiction, how should the parameters of capture be measured?**

20. VLV notes that 'the government is... minded only to bring larger non-UK VoD providers which target UK audiences under Ofcom's jurisdiction'<sup>8</sup>. On the basis that this would cover the majority of non-UK VoD content watched by UK audiences, as is stated in the consultation document, VLV agrees with this approach.

21. VLV agrees that 'providing Ofcom with the power to designate services outside the UK based on a number of factors including risk or potential harm, or simply identifying the services in legislation which should be captured might be simpler and more effective'<sup>9</sup> because this approach will be more dynamic and will allow Ofcom to revise thresholds as audience habits change.

### Scope of regulation

---

<sup>6</sup> *Audience protection standards on Video-on-Demand Services* Consultation, DCMS, 31 August 2021.

<https://www.gov.uk/government/consultations/audience-protection-standards-on-video-on-demand-services/audience-protection-standards-on-video-on-demand-services>

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

**Q3 - What type of regulatory system should be used - notification, licensing or another type of system? Please explain your reasoning.**

22. VLV considers that adapting the current notification system which is already in place would be the most sensible approach since it is more familiar to existing VoD services. However, VLV would wish the government to include new obligations for VoD platforms so that audiences are better protected and there is greater consistency between the regulation of linear TV and TV-like VoD services.

**Q4 - Should VoD services be brought under additional obligations? Yes/No? What additional obligations should VoD services have? Please explain your reasoning.**

23. As stated in response to Question 3, VLV believes that additional obligations should apply to VoD services to improve the safeguarding of audiences.

24. VLV believes that these obligations (additional to those already in place for VoDs) should closely mirror those in broadcasting licences and the Broadcasting Code and should include:

- Meeting Ofcom's Fit and Proper test to ensure persons are appropriate to provide a service for UK audiences
- Having procedures in place to manage i) fairness and privacy and ii) content standards complaints
- A requirement to comply with standards set under the Broadcasting Code
- Meeting requirements for the handling of communications from viewers
- Putting in place adequate compliance procedures to ensure that the licensee can comply with its licence conditions and Ofcom's codes and rules

25. VLV considers that these additional obligations are necessary if audiences are to be able to assume that regulation of TV-like content, whether it be accessed on linear TV or on VoD, is consistent.

**Bringing VoD services under the Broadcasting Code**

**Q5 - Do you think that VoD services should be regulated under the Broadcasting Code? Yes/No? Please explain your reasoning.**

26. As stated in response to Question 4, VLV believes that VoD services should be regulated under the Broadcasting Code.

27. VLV believes the government is right to be concerned 'with the disparity between the regulation of linear television and TV-like VoD services, which do not provide the same level, or consistency, of audience protection'<sup>10</sup>.

28. VLV notes that the current On Demand Programme Services (ODPS) rules which govern VoDs registered in the UK, allow services to manage content complaints under a self-regulatory system and Ofcom does not have the power to regulate content standards outside the ODPS rules.

---

<sup>10</sup> Ibid.

29. VLV notes Ofcom research<sup>11</sup> shows that audiences do not generally understand that all TV-like services are not regulated equally and they 'mistakenly expect their level of protection to be similar across broadcast and VoD'<sup>12</sup>.
30. Under the current ODPS system VLV understands that regulated VoD services must have systems in place to protect the under 18's and not include content which incites hatred or which includes prohibited material. There are also regulations in place regarding sponsored content and product placement as well as a requirement that 30% of the content on the platform is made in the EU.
31. The gaps in regulation between the Broadcasting Code and the ODPS regulations are as follows:
- Rules on the coverage of sexual and other offences in the UK involving under-18s, demonstrations of exorcisms, occult practices and the paranormal.
  - The ODPS rules do not require services to provide due care to the physical and emotional welfare and the dignity of people under eighteen who participate in programmes.
  - The ODPS rules do not provide adequate protection from the inclusion of harmful and/or offensive material as set out in Section 2 of the Broadcasting Code. This includes the requirement that content should be accurate and 'not materially mislead the audience'<sup>13</sup>.
  - Section 3 of the Broadcasting Code has more extensive provisions than the ODPS to ensure that content which encourages crimes or leads to disorder is not broadcast.
  - Religious programming is not regulated at all currently on VoD services.
  - Due accuracy and impartiality regulations in the Broadcasting Code, which mostly apply to news and current affairs output, are not included in the ODPS regulations.
  - Rules governing impartiality during elections and referendums are not included in the ODPS regulations.
  - There are no regulations regarding fairness or privacy in the ODPS rules.
32. VLV is concerned that audiences should not be exposed to content which is harmful, whether that is because it is inaccurate, incites crime, includes extremist religious views, or is included in a news or current affairs programme and is partial. There is also a clear risk to UK democracy if VoD are services not regulated for due impartiality during periods when elections or referenda are being held. Additionally, VLV believes that producers of content for VoD platforms should be bound by the Fairness and Privacy rules of the Broadcasting Code to avoid unjust or unfair treatment of individuals and organisations.
33. VLV holds that these regulations should apply regardless of the platform upon which TV-like content is transmitted in order to protect audiences and citizens who might be the subject of a programme and to safeguard UK democracy.

**Q6 - Are there any specific elements of the Broadcasting Code (or standards set out in legislation) that should not apply to some or all VoD services? If so, what elements should not apply and to which VoD services?**

34. VLV considers that all elements of the Broadcasting Code should apply to all VoD services because if this regulation is only applied to certain services and not others, this will be

---

<sup>11</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0029/193484/audience-expectations-in-digital-world-report.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0029/193484/audience-expectations-in-digital-world-report.pdf)

<sup>12</sup> Ibid.

<sup>13</sup> <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

confusing for audiences. They will not be able to be confident that what they are watching is safe and accurate.

## **Audience protections**

**Q7 - Do you think the current protections used by VoD services provide a sufficient level of protection for audiences? Yes/No? Please explain your reasoning. In particular, if no, what additional measures should be provided?**

35. VLV considers that the current protection tools used by the VoD services do not provide a sufficient level of protection because they are inconsistent which is confusing for audiences (see our response to Question 8).
36. VLV notes that much of the content on the main BVoD platforms in the UK (ITV Hub, All4 and My5) has already been broadcast so it more often than not conforms with the Broadcasting Code. However, much of the content on other VoD services has not been previously broadcast in the UK and therefore has not been subject to any regulation. In addition, as content is increasingly appearing on broadcaster VoD services before it appears on television, it is possible it may not meet the standards of the Broadcasting Code.
37. VLV acknowledges that the BVoDs, along with other VoD services available in the UK, have instituted a range of audience protection tools which include password-protected accounts, pin codes, content warnings, age classifications and age verification. While many of these are effective, when properly taken account of or implemented by users, their inconsistency is of concern.
38. VLV agrees that the current application of the Broadcasting Code to the BBC iPlayer could be a potential framework for broadening regulation to all VoD services which target UK audiences.

**Q8 - Should there be increased conformity on protection tools and warning systems across all VoD services to provide more consistency for UK audiences? Yes/No? Please explain your reasoning.**

39. As stated above, VLV believes protection tools and warning systems should be consistent across all VoD services. Conformity would make the system easier for audiences to understand and ensure that all VoD operators are upholding the same robust audience protection systems. This would result in audiences being afforded a similar level of protection when they watch on-demand content as when they watch linear TV.
40. Many of the VoD platforms are global and the criteria determining age classifications and guidance vary between different cultures so may not be appropriate for UK audiences.
41. While VLV acknowledges that some platforms have begun to introduce their own standards and tools for audience protection, these have been instituted voluntarily and there is no guarantee they will continue to be implemented.

**Q9 - Should a UK classifications/warnings system (such as the age classification system operated by the BBFC) be mandatory? Yes/No? What**

**types of content would be most appropriate to require classifications/warnings? Please explain your reasoning.**

42. VLV believes there should be mandatory, consistent UK classification and warnings systems in place for VoD platforms. Ideally all content should be classified.
43. While the BBFC age ratings are well known to UK cinema-goers, VLV has concerns that they are less robust than the Broadcasting Code in some respects and aren't as commonly used for factual content as they are for films. For example, a 12 rating under the BBFC classification system, allows the broadcasting of strong language 'depending on the manner in which it is used, who is using the language, its frequency..' <sup>14</sup> while the Broadcasting Code demands that 'frequent use of offensive language must be avoided before the watershed and must always be justified by its context' <sup>15</sup>. While defining 'strong language' and 'offensive language' are challenging, VLV senses that provisions in place to protect children who are under 15 are stronger in the Broadcasting Code than they are under the BBFC ratings system.
44. It should be taken into consideration that if BVoDs are required to implement the BBFC classification system across all their content this will impose significant costs upon them at a time when broadcasters' funding is limited because they have historically been at a competitive disadvantage with the global streaming VoD platforms.
45. Separately, VLV considers that the guidance systems the BVoDs have in place to warn audiences about content which may be offensive or harmful to children are adequate to protect audiences. VLV considers that these should provide the model for any guidance system required by new regulation of VoDs.

**The impact of changes to regulation**

**Q10 - What impact could the proposals set out in the consultation document have on VoD providers and the delivery of services? What are the potential direct and indirect costs of additional regulatory requirements for VoD providers? These would include (but are not restricted to) potential costs associated with standardising audience protection measures, updating library content to conform with the Broadcasting Code and/or new standards of warnings/guidance like BBFC ratings. If possible, please provide impact/cost for each proposal separately.**

46. While VLV acknowledges that imposing additional regulatory requirements on VoD services will introduce additional costs, VLV considers that these additional costs are unavoidable if the government is to achieve its goal to ensure that UK audiences receive a similar level of protection no matter how they watch TV-like content.

**Q11 - What impact could the proposals set out in the consultation document have on UK audiences and the service that UK audiences receive (this is in addition to the benefits of increased audience protection)? To what extent**

---

<sup>14</sup> <https://www.bbfc.co.uk/rating/12>

<sup>15</sup> <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code/section-one-protecting-under-eighteens>



**would additional costs be passed onto consumers, for example through higher subscription fees?**

47. VLV acknowledges that additional regulatory requirements on VoDs could lead to less content being available for audiences on VoD services. This would come about if VoD content is in breach of the new regulations, the VoDs consider it is not financially viable to update library content to conform with new regulations or choose to not have content checked for new standards or age verification.
48. If less content is available for audiences because of the new regulations, such as when a factual programme is removed because it is not accurate, VLV believes this would be ultimately beneficial for audiences because they would be better protected despite having access to less content.
49. If VoDs raise their subscription fees, this would be detrimental for audiences, but it is important to note that taking out a subscription to a VoD service is voluntary.