



**Response from the British Screen Advisory Council to the  
European Commission Green Paper**

**“Preparing for a Fully Converged Audiovisual World:  
Growth, Creation and Values”**

**10 September 2013**

**Key principles for evolution of regulatory framework over the next decade:**

- **The regulatory framework should provide more flexibility than before to allow adjustments to be implemented gradually as and when necessary in response to changes in technology, consumer behaviour and economic models**
- **As global competitive pressures intensify, EU audiovisual policy should place greater emphasis on creating the right conditions to enable businesses to grow and create jobs. This includes providing appropriate incentives that encourage innovation, and actively seeking to remove regulatory restrictions that have become redundant**
- **A well-functioning system of content regulation needs to include content labelling and the tools necessary to empower consumers to protect themselves and their families**
- **The regulatory framework needs to recognise that the nature of organisations playing a significant role in audiovisual markets is broader than previously, without seeking to extend the scope of interventions in ways that would be impractical to implement or might lead to unintended consequences. Models of self-regulation should be promoted when appropriate**

## Introduction

1. The British Screen Advisory Council (BSAC) is an independent, industry-funded umbrella group bringing together many of the most influential people working across the value chain in the audiovisual industry, including television, film, video games and new digital media businesses. BSAC works closely with policymakers across UK government departments to provide an informed lead on emerging business trends and to provide advice on policy. BSAC is also active at the European level. Recent policy work has included an analysis of the economics of the audiovisual sector and the implications for the proposed EU-US free trade agreement, and a response to the draft Communication from the European Commission on State Aid for film and other audiovisual works. BSAC is also engaged in the debates on copyright which have emerged from the Commission's Communication 'A Single Market for IP Rights'.
2. BSAC welcomes the opportunity to respond to the European Commission's Green Paper on convergence. BSAC has engaged in policy issues relating to the impact of convergence for some years. In 2011, when the UK Government launched its Communications Review, three Working Groups – focusing on Content Production; Platforms, Services and Suppliers; and Content Regulation – produced reports that were submitted to the Government.
3. BSAC has adopted a similar approach for the current consultation, establishing two working groups to address the issues. The first group, on Platforms, Services and Competition, was mainly concerned with the questions set out in the Green Paper in the section on Growth and Innovation, covering issues such as business models, production financing, promotion of European works, interoperability, infrastructure and spectrum. The second group, on Regulation, primarily addressed the questions in the section on Values in the Green Paper, covering content regulation, data protection, media literacy, advertising regulation, consumer protection, protection of minors and accessibility. Certain cross-cutting issues, such as access and discoverability, were covered in both groups. Our approach ensured that BSAC's submission was able to benefit from the contributions of a broad range of stakeholders. This response brings together the conclusions from both groups, and has been endorsed by the BSAC Council.<sup>1</sup>
4. As the extensive list of topics listed under the working groups indicates, the Green Paper has an extremely broad scope. At the same time, notwithstanding the significant changes we have witnessed in the audiovisual sector, the Green Paper recognises that we are still only at the early stages of the journey to a fully converged, connected world. While the direction of travel is becoming clearer, there remains huge uncertainty about the pace of change and what the end-point will look like, and we welcome a debate on the issues that will shape the audiovisual sector in the years ahead. Reflecting the fact that the Green Paper itself represents an early stage in the process of developing an appropriate regulatory framework for a fully converged world, the questions posed in the consultation are inevitably high-level in nature.

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<sup>1</sup> A full list of BSAC Members can be found at <http://www.bsac.uk.com/membership-list.html>

5. For this reason, BSAC believes it is most helpful to focus its response as much on key principles which should underpin the evolution of public policy over the coming decade as on the individual questions posed in the Green Paper. This response begins, in the next section, by describing the uncertainties that exist in the transition to a fully converged world and asking what problems we should be trying to solve. It then goes on to set out the key principles identified by BSAC that we think should inform policymakers' decisions in order to address these issues. The final section responds to the individual consultation questions.

### **What problems are we trying to solve?**

6. As a first step in considering an appropriate regulatory framework for a fully converged world, it is important to consider what problems policymakers should be trying to solve, and to determine the extent to which the changes resulting from convergence require a new approach to public policy. A key point to emphasise at the outset is that any new regulatory framework will need to be fit-for-purpose not only for a fully converged world but for the transition to that world (which could take a decade or more).
7. At the most basic level, audiovisual policy has always sought to **empower** and **protect** citizens. National and European regulations help to empower citizens through policies which, for example, encourage the creation, distribution and promotion of content from European countries that entertains audiences and provides cultural, social and democratic value; along with measures which promote freedom of speech and media plurality. It protects them through rules that seek to prevent young people from accessing harmful content and other content rules such as provisions to ensure due accuracy and impartiality in news and current affairs programmes, or limits on the amount of advertising that can be shown each hour on linear TV channels.
8. This regulatory framework, and the dual system of public service and private media provision, together help to maintain a sophisticated and thriving ecology of European broadcasters and producers, generating a number of positive social and economic outcomes:
  - It leads to high levels of investment in content: in the UK, for example, total annual spend on original first-run domestic programming is estimated to be worth more than £4 billion.<sup>2</sup>
  - It ensures that audience needs are served across Europe, with viewers able to enjoy a wide range of high-quality content that reflects their own national tastes and interests. In many countries, domestically-produced TV programmes attract the highest ratings, often outperforming imported shows in similar genres, including those made in much larger territories, such as the US, whose large domestic population and economies of scale enable programmes to be funded at much higher levels.

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<sup>2</sup> See "Creative UK: The audiovisual sector and economic success", Robin Foster and Tom Broughton (2011)

- It provides significant economic benefits to EU Member States. The intense competition for quality between broadcasters – both public and private – leads to world-class programming capable of competing on the global stage. The most successful European broadcasters and producers export their programmes and formats around the world. PACT research shows that the UK is the world’s second most successful exporter of TV content, behind the USA, with total revenues from the international sale of UK television programmes and associated activities worth almost £1.5 billion in 2011. A separate survey commissioned by the Format Recognition and Protection Association (FRAPA) showed that the UK leads the world in terms of the number of exported formats. Broadcasters and producers in other European countries have also enjoyed significant success both within and outside the EU. Endemol, based in The Netherlands, sells formats such as *Big Brother* and *Deal or No Deal*, to around 400 broadcasters globally. High-quality European dramas such as Danish broadcaster DR’s *Forbrydelsen/The Killing*, have become cult hits in other countries and remade in English for the US market.
9. It is important to ensure that Europe’s audiovisual sectors continue to thrive in the future, and that the regulatory framework remains fit-for-purpose in the face of market and technological developments. Over the last decade or so, innovative devices, faster and more pervasive networks, and new content and applications have together driven a process of convergence, with all its related consumer benefits and risks. Convergence has significantly disrupted the production, distribution and consumption of media content. Digital technologies have provided new ways of distributing music, radio and TV channels, movies, games, books and newspapers. The initial wave of convergence, in the early 2000’s, introduced new kinds of digital devices such as the iPod and multi-functional mobile phones. In the late 2000’s, the development of sophisticated converged mobile devices such as smart-phones and tablet computers provided a new platform for consuming these and other kinds of media and communications services, heralding the second wave of convergence. This period also saw the launch of the first video-on-demand (VOD) TV catch-up services such as Channel 4’s 4oD (in 2006) and the BBC iPlayer (in 2007). Attractive new content offers have both benefitted from and helped drive investment in networks and device innovation.
  10. While the impact of these first two waves has been dramatic and rapid – it is easy to forget that the iPhone, which revolutionised the smart-phone market, was launched just six years ago (in summer 2007) and the iPad, which kick-started the tablet market, just three years ago (in 2010) – the transformative effects of convergence are likely to be felt more strongly still in the next decade, as we experience the third wave of convergence, which is likely to be characterised by the development of connected TVs alongside other emerging converged experiences such as second-screen usage and a proliferation of connected devices more generally. These developments will have significant implications for the consumption, distribution and commercialisation of content. Convergence is only now beginning to arrive in the living room: smart TV sales are starting to take off, new connected TV platforms such as YouView are coming

to market, and the capabilities and functionality of other platforms that can be used for TV and audiovisual content, such as gaming platforms, are being enhanced.

11. This third wave of convergence is at a nascent stage. Demand for on-demand services via connected TVs remains very low for now. BBC data<sup>3</sup> shows that almost half of all iPlayer requests in May 2013 came from PCs (down from almost 60% a year earlier). Requests from tablets and mobile devices accounted for 30% of the total (doubling over the last year), while internet TVs and other connected devices accounted for just 2% of all requests. In some respects, changes in consumer behaviour over the last decade have been relatively modest – viewing of linear TV channels has remained steady in the UK, for example – and far more dramatic changes can be expected in the years ahead. Given the replacement cycle for television sets, along with the continuing spread of fast broadband connections, we can expect a substantial number of homes to have internet-enabled connected TVs in 7-10 years' time. A Digital TV Research survey forecasts the global number of TV connections to the internet to treble in the next five years, from around 200 million in 2012 to almost 600 million by 2017, while SNL Kagan forecast that the number of connected devices in the UK will grow five-fold over the same period, from 24 million in 2012 to over 120 million by the end of 2017.<sup>4</sup>
12. As connected TVs increasingly become gateways to much more than just a finite number of linear scheduled TV channels, there is significant uncertainty about what the impact of connected TVs will be in the years ahead. There are several “known unknowns”:
  - **Service propositions.** We can be fairly certain that VOD services offering catch-up and archive TV programmes, films, music videos and so on will play a key role in the connected TV space. But it is far too soon to assess which other kinds of TV apps or services viewers will consume in significant numbers, and whether demand will be larger for these apps on TV sets or via “second screens”.
  - **Service providers.** The number and range of operators competing to provide gateways to audiovisual content and other services on connected TVs is much larger than in the past. Alongside the incumbent broadcasters and TV platform operators, there is increasing competition from film and TV VOD aggregators (such as Lovefilm and Netflix), companies with their own content ecosystems (the likes of Apple, Amazon and Google), TV hardware manufacturers, other retailers (e.g. Dixons and Tesco in the UK), independent production companies and other content creators seeking to connect directly with end users.
  - **Timings.** Unlike with digital switchover, the last major technological transition in the television industry – which had a clear end-point and a fixed timetable – there is no predetermined end-date. The next stage of convergence

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<sup>3</sup> See <http://www.bbc.co.uk/mediacentre/latestnews/2013/iplayer-performance-may13.html>

<sup>4</sup> See [www.prweb.com/releases/2012/6/prweb9644582.htm](http://www.prweb.com/releases/2012/6/prweb9644582.htm) and [www.digitaltvresearch.com/ugc/press/46.pdf](http://www.digitaltvresearch.com/ugc/press/46.pdf)

will be an almost entirely market-driven process, which will be influenced by a range of supply-side (e.g. the rate of rollout of fast and cheap broadband services) and demand-side (e.g. consumers' demand for choice and flexibility, and their willingness to pay for new devices and services) factors.

- **EPGs.** The 2x2 grid which defines most multi-channel electronic programme guides (EPGs) is an effective approach to presenting TV schedules in the linear world, and became an established industry standard. With a much wider range of content and services available on demand on connected TVs, different forms of content guides have emerged. We can expect plenty of experimentation in the market, and it is too soon to ascertain what EPG interfaces will gain most traction or which ones, if any, will become industry standards.

13. Alongside these known unknowns, there may also be unknown unknowns: just as when Apple transformed the smart-phone market when it released the iPhone, similar game-changing technological developments could have a dramatic impact on the connected TV market and the audiovisual sector more generally.
14. Taking these factors together, it is difficult to predict how long it will take to reach a fully converged world, exactly what it will look like, and which companies will be winners or losers. A plethora of platforms, devices and services will seek to differentiate themselves based on their content libraries, exclusivity of content, ability to manage content across different devices (TV, PC, mobile), pricing, integration of personal media catalogues (e.g. photos, music, TV and films), cloud-based services and ease of use.
15. These changes raise important questions about the relevance and feasibility of existing policy measures. (Should content originated in European countries be promoted in a connected TV environment, and if so how? Is it practical or desirable to maintain rules such as limits on advertising that were designed for linear platforms? How can young people be effectively prevented from accessing unsuitable material? And so on.) Stepping back from specific issues, it could be argued that the core aim of public policy remains the same as before: namely, to help empower and protect European citizens. However, how this is done is likely to change significantly in response to market and technological developments. In particular, the balance between measures that empower citizens and those that seek to protect them is likely to change, given the greater level of choice and control that is available to consumers in the digital media environment, and the resulting changes in audience expectations. Moreover, designing and implementing a regulatory framework that achieves the desired objectives is much harder in a converged world than in a linear analogue world, as new kinds of content become available, as boundaries blur between formerly distinct market categories, as new kinds of companies enter the value chain for the production and distribution of audiovisual content, as user-generated and non-professional content plays a greater role, and as content increasingly crosses geographical borders, including content produced and distributed via services based outside the EU. It is arguably harder still during the transition period as we move to a fully converged world.

16. The uncertainties described above pose significant challenges and have important implications for the characteristics of a fit-for-purpose regulatory framework. The most fundamental challenge will be to strike the appropriate balance between certainty and flexibility:
- Too much regulation can be as harmful to innovation and growth as too little
  - It is important for regulatory changes to be introduced neither too soon nor too late
  - The scope of the regulatory framework must be sufficiently broad to embrace new kinds of content and market participants without imposing new measures that are either impractical to implement or which would discourage innovation and growth of European companies
  - The balance between the appropriateness of self-, co- and statutory regulatory models is shifting and must be allowed to evolve within the overall framework.
17. In conclusion, it is essential to strike the appropriate balances between the amount, timing, scope and nature of intervention in order to continue to empower and protect European citizens. The next section sets out some key principles that are intended to help achieve this.

### **Key principles**

18. This section sets out four key principles for a regulatory framework in a fully converged world. These relate to:
- The need for flexibility given the high levels of uncertainty as we make the transition towards a fully converged world (see response to Q5, 12, 17-19)
  - The desirability of providing appropriate incentives for businesses to encourage growth and innovation (see response to Q1-3, 4-5, 6, 8)
  - The necessary components of a well-functioning system of content regulation (see response to Q10-11, 20-25)
  - The need to recognise the broader range of organisations playing a significant role in audiovisual markets (see response to Q7, 15-16, 20-25, 26-27).
- 19. The regulatory framework should provide more flexibility than before to allow adjustments – whether new interventions, changes to existing measures or the removal of rules that have become redundant – to be implemented gradually as and when necessary in response to changes in technology, consumer behaviour and economic models***
20. There is a tension between the desire for certainty, which businesses demand, and the multiple forms of uncertainty associated with the transition to a fully converged world, as described in the previous section. In practice, it will be impossible to design a regulatory framework today that can be guaranteed to strike the appropriate balances between the amount, timing, scope and nature of intervention that will guarantee a set

of rules that will be fit-for-purpose through the entire period of transition towards a fully converged world.

21. Given the time-frames involved in debating and enacting primary legislation – particularly at the European level, given the greater number of stakeholders involved – there is a need for a materially new approach to regulating the audiovisual sector that reflects these uncertainties, and which strikes a new balance between “principles” and “rules” in legislation. This approach should build far more flexibility into the legislative framework, to allow the details associated with regulatory measures (such as operational rules or the levels of quotas) to be adjusted over time in response to changes in technology, consumer behaviour and economic models, without the need for primary legislation. At the same time, it should involve open and transparent processes for making these adjustments, to provide businesses with as much clarity as possible.
22. ***As global competitive pressures intensify, EU audiovisual policy should place greater emphasis on creating the right conditions to enable businesses to grow and create jobs. This includes providing appropriate incentives that encourage innovation, and actively seeking to remove regulatory restrictions that have become redundant***
23. Recent debates about the economic and cultural impact of the audiovisual sector in the context of the recently-launched EU-US Transatlantic Trade and Investment Partnership (TTIP) highlighted the complex global competitive environment in which European audiovisual companies operate.<sup>5</sup> Audiovisual markets are high-risk hit-based businesses with high fixed costs and low marginal costs of production. In purely economic terms, this gives an advantage to US audiovisual companies: with a much larger home market than any European country, they can exploit economies of scale and scope in their domestic market – through horizontally and vertically integrated studios that combine production and distribution, and which are capable of managing large portfolios and sustaining high levels of investment – and then exploit their content globally. Corresponding economic benefits do not accrue to companies based in the EU: while in population size, Europe is comparable in scale to the US, it is not a homogenous market, with a multitude of languages and significant cultural and social differences. Across Europe, lists of the most popular TV programmes in each Member State are dominated by shows that are produced in that specific country. As a result of these intrinsic national differences – which mean that some content that is popular in one country may have little or no appeal in other countries, given the variance in tastes across the continent – different markets have to be targeted separately, undermining the potential to achieve equivalent economies of scale across Europe.
24. In this challenging economic context, the success enjoyed by domestic broadcasters and production companies in the UK and other European countries may be attributed to a vibrant ecology comprising both public and private sector organisations, supported by a regulatory framework that is designed to address market failures and which also helps to counterbalance the asymmetry between the size of the US market and the much

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<sup>5</sup> See “Future-proofing a great British success story: The economics of the audiovisual sector and the implications for the proposed EU-US free trade agreement”, BSAC, June 2013

smaller markets in individual European countries. A central component of public policy in the audiovisual sector is each country's public service broadcasting (PSB) system: this (along with other interventions which in the UK include the BFI's support for film production and tax breaks for film, high-end TV drama and animation) supports the production and distribution of domestic content that is universally available, and generates positive externalities in the form of economic, social and cultural benefits. It helps to sustain a virtuous circle between levels of investment across the sector, the volume and quality of content that is produced, audience demand for this content, and the revenues that underpin further investment. Within this ecology, strong public service broadcasters help to promote competition for quality between public and private broadcasters alike, leading to an overall raising of standards amongst all broadcasters.

25. As testament to the effectiveness of this complex ecology, not only does it succeed in delivering high levels of investment across a wide range of TV programme genres and other forms of content. In addition, the high quality of acting, writing, directing and other production talent helps to attract investment from much larger countries, including the US. The EU benefits from being an attractive destination for inward investment: it provides additional revenue streams for domestic businesses, stimulating growth and jobs, and enabling audiovisual sectors to operate at a greater scale of operation. The UK welcomes significant levels of inward investment by US companies in film, TV, video games and digital media, including long-term investments such as the purchase by Warner Bros. of the Leavesden Studios.
26. The market and technological changes resulting from convergence do not undermine the underlying rationales for intervention that support this ecology. In new digital markets, lower barriers to entry help to promote competition, but these are often counterbalanced by network effects, whereby the value of a service rises exponentially with the number of users. Companies in markets with the largest domestic populations can take an early lead in new markets by leveraging scale economies (including the enhanced bargaining position it provides in negotiations with rights holders), and then exploit network effects to consolidate their position and to expand into digital markets around the world. Factors such as this contribute to the success of VOD services such as Apple's iTunes Store around Europe. More generally, the global nature of digital services means that European audiovisual companies of all kinds face greater competitive pressures than ever before. These pressures are intensified further by the number of services competing for audiences' attention on converged devices – including games, apps and social media.
27. Of course, there are important success stories around Europe in digital media. In the UK, these include services developed by established players, such as the BBC's iPlayer and Channel 4's 4oD – both of which launched ahead of major US VOD services such as Hulu (which went live in 2008) – and Sky's suite of digital apps; new digital companies like Spotify and Shazam; and games companies such as Mind Candy (maker of *Moshi Monsters*). It is important to create the conditions to encourage greater innovation in the digital space in the future. BSAC's view is that, alongside the core goals of empowering and protecting citizens, it is increasingly important that – as global competitive pressures intensify – European audiovisual policy should place

greater emphasis on creating the right conditions for European businesses to be able to compete and thrive in both domestic and international markets, in order to support growth and job creation.

28. This comprises a number of elements: for example, an open competitive environment, alongside a strong framework to protect intellectual property rights, so audiovisual companies can generate the financial returns that underpin their ability to invest in content in the first place. It may also involve the provision of appropriate incentives for businesses to encourage growth and innovation, including measures to support investment in training and R&D. Policymakers should also seek to remove regulatory restrictions that have become redundant, especially those that may impose significant and unnecessary burdens on companies.
29. Measures to support European businesses and encourage innovation would benefit European citizens in two ways. First, a more successful industry will help to ensure the provision and promotion of content that provides social, cultural and democratic value to European citizens. And second, in challenging economic times across Europe, it can promote employment and economic growth.
30. *A well-functioning system of content regulation needs to include content labelling and the tools necessary to empower consumers to protect themselves and their families*
31. Protection of minors is perhaps the quintessential area of regulation where the policy objective remains the same as it has always been, but where technological developments mean that the means to achieve this objective will need to fundamentally change. In a linear television world, protection of minors – and other forms of content regulation – could be implemented through a system of licensing and rules. The UK’s licensing model ensured that all TV channels were automatically brought into the system as a condition for broadcasting, while the rules (set out in the UK in Ofcom’s Broadcasting Code) were able to deliver the required aims through measures such as the 9pm watershed.
32. This system breaks down in the converged world. IP-delivered services distribute unlimited volumes of content. There are no barriers to the distribution of content from outside the EU. The content mix includes user-generated as well as professional content. Any kind of statutory licensing model is both disproportionate and impractical. Moreover, the kinds of protections offered by measures such as the watershed for TV channels cannot readily be transposed to an on-demand environment when all content is potentially available at all times.
33. An inevitable consequence of this is that new approaches are needed in order to achieve the public policy goals. To be effective, any new approach must be practical and proportionate, without imposing an excessive burden on content creators or service providers. Self- and co-regulatory models are likely to play an increasing role. In the UK, for example, effective models have been adopted to regulate VOD services and advertising. Implementation of the Audiovisual Media Services (AVMS) Directive as it

applies to non-linear media services has been achieved through a co-regulatory model in which The Authority for Television On Demand (ATVOD) determines scope issues and enforces editorial requirements and the Advertising Standards Authority (ASA) enforces requirements relating to commercial communications, with Ofcom acting as backstop. These co-regulatory models enjoy wide support and allow regulation to be conducted in cooperation with the regulated industry while maintaining independence of decision-making. They also provide further advantages: securing greater buy-in from the regulated entities (which encourages compliance), ensuring that industry expertise is brought to bear when issues arise, identifying at an early stage the impact that changes may have on the industry, and the facility to identify and remove any unnecessary burdens to innovation and investment.

34. A rating tool for user-generated content that has recently been developed by the British Board of Film Classification (BBFC) and the Netherlands Institute for Classifying Audiovisual Media (NICAM) provides a good example of a self-regulatory model which can work across multiple territories while respecting differing cultural norms in each country, and which moreover has the potential to cover a vast – and potentially limitless – range of user-generated material without imposing a disproportionate burden on any party. The tool (which is currently in the early stages of testing) is designed to enable those with responsibility for children to make fully informed viewing choices in relation to non-professional content online. Content is rated using a single, simple questionnaire with six questions – covering behaviour, drugs, horror, language, sex and violence – that takes no more than two minutes to complete for each piece of content (see Figure 1).

**Figure 1: BBFC/Nicam rating tool for user generated content**

<p><b>(1) Users respond to six simple questions, which are the same in each country...</b></p> <p><b>Review of UGC Content</b></p> <p>Please confirm below if the work contains any or all of the following classification issues:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Behaviour - dangerous, discriminatory or anti-social behaviour</li> <li><input type="checkbox"/> Drugs - Including references to or use of illegal drugs, alcohol and smoking</li> <li><input type="checkbox"/> Fear and emotional impact - Ranging from mild scary scenes to strong horror</li> <li><input type="checkbox"/> Sex / Nudity - Ranging from mild sexual behaviour or natural nudity to explicit sex</li> <li><input type="checkbox"/> Swearing - Any language, from mild terms to very strong (including discriminatory terms)</li> <li><input type="checkbox"/> Violence - Ranging from mild fantasy or slapstick violence to strong bloody violence</li> </ul> <p><b>REPORT ABUSE</b></p> <p><input type="checkbox"/> Yes This work contains material which is unacceptable, for example hate speech, child sexual abuse images, extreme pornographic images, realistic depictions of rape or any other unacceptable content.</p> <p><input type="button" value="Submit"/></p>	<p><b>(2) Guidance can be tailored to each country...</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Drugs - including references to or use of illegal drugs, alcohol and smoking</li> <li><input type="checkbox"/> Fear and emotional impact - Ranging from mild scary scenes to strong horror</li> <li><input checked="" type="checkbox"/> Sex / Nudity - Ranging from mild sexual behaviour or natural nudity to explicit sex</li> <li><input checked="" type="checkbox"/> Mild sexual behaviour / references, or natural nudity <span style="border: 1px solid black; padding: 2px;">e.g. kissing, nudity seen in a documentary context with no sexualised element, breastfeeding</span></li> <li><input type="checkbox"/> Sexualised posing or nudity which is not sustained or</li> <li><input type="checkbox"/> Sexual activity / crude verbal references to sex with</li> <li><input type="checkbox"/> Explicit sexual activity / nudity / references</li> <li><input type="checkbox"/> Swearing - Any language, from mild terms to very strong (including discriminatory terms)</li> </ul> <p><b>(3) The tool immediately provides a rating, which can vary by country to reflect national sensitivities</b></p> <p><b>Outcome - Your BBFC Online Rating</b></p> <p>Based on the information provided, the following decision has been awarded:</p> <div style="text-align: center;">  <p><b>Teens / 'T'</b> This work is suitable for teenagers</p> <p>This work contains: Nudity</p> </div>
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Source: BBFC

35. The tool immediately produces an age rating for the content, which can differ from country to country to reflect national sensitivities. Platforms can then present age rating for each piece of content, derived from questionnaires completed by those uploading content and/or users viewing the content. There is also a facility for viewers to report content which in their view might be illegal to the appropriate law enforcement body in each country. NICAM and the BBFC are hoping to involve other ratings bodies and platforms to develop the tool further.
36. The Internet Watch Foundation is another example of effective independent self-regulation. It aims to minimise the availability of potentially criminal internet content, and operates a hotline to report criminal online content in a secure and confidential way. The IWF is funded by the online industry, including ISPs, mobile operators, content providers, hosting providers, filtering companies and search providers, and also receives support from the EU. Its approach is widely recognised as a model of good practice in combating the abuse of technology for the dissemination of criminal content and, reflecting its growing authority, its remit and budget are currently being extended.
37. In a converged world, any service providing libraries of audiovisual content requires two elements, both of which are necessary to ensure adequate consumer protection. First, clear and easily understood forms of content labelling are needed, such as the age classifications used for feature films and other kinds of content. The BBFC-supported trial shows how such a system could potentially be extended to cover user-generated content (and any content library more generally). Second, tools – whether embedded in networks or devices, or provided by browsers, search engines or individual services – are necessary in order to empower citizens. These include “switches” or filters that enable people to control what kinds of content can be accessed by themselves and their families. This enables them, in particular, to prevent children from accessing content that is not suitable for them. Such a framework enables new forms of parental control to be introduced that are arguably more targeted and flexible than traditional rules like the watershed, such as the option to PIN-protect content on a VOD service that is labelled as being unsuitable for children, or any content that is recorded after 9pm on a linear TV platform, so that it can only be played back before the watershed once the viewer has entered the PIN.
- 38. The regulatory framework needs to recognise that the nature of organisations playing a significant role in audiovisual markets is broader than previously, without seeking to extend the scope of interventions in ways that would be impractical to implement or might lead to unintended consequences. Models of self-regulation should be promoted when appropriate***
39. One of the most significant changes that have occurred over the first two waves of convergence is the emergence of new kinds of organisations that play a significant role in media markets. Most notable are the services offered by the likes of Google, Apple and Amazon, which are key players now in the retail and distribution end of the value chain (and have also begun experimenting with investment in production). These companies have grown in size and importance, capturing significant market share for many kinds of content. They operate globally – typically tailoring their services to

individual markets in response to differing national tastes – and are much larger than most European companies operating in the same markets. And, notwithstanding the diverse range of activities that they undertake, their business models increasingly rely on media content and services.

40. This raises an important challenge. Any regulatory model that excludes these companies entirely from its scope (as is currently the case under AVMS) will create a distorted playing field, as the regulatory levers will apply only to a subset of the relevant markets. In many cases, as well as making regulation less effective, this will put European companies subject to a greater regulatory burden at a competitive disadvantage. It can make it harder for companies to compete on equal terms with new players in markets in which traditional revenue streams are coming under increasing pressure. On the other hand, extending the scope of regulations runs the risk of introducing new barriers to growth and innovation, which would be harmful to European citizens. And there is significant potential for unintended consequences to arise. For global companies based outside Europe, disproportionate regulations could act as disincentives to invest, which would not only lead to a diminution in the range of services available to citizens, but could also impact on employment, as many global companies base parts of their operations in the EU. There are also significant challenges in extending rules to non-European companies with no physical presence in the EU.
41. A balance therefore needs to be struck. Over time, the policy framework needs to adapt in order to recognise the contribution of all companies that play a significant role in audiovisual markets, and consideration should be given as to whether certain measures should apply to them. For example, the discussion of a well-functioning content regulation model (above) highlighted the inclusion of network or infrastructure tools as an essential part of the framework for consumer protection. This suggests that new players – which might include device manufacturers, ISPs and the owners of operating systems such as iOS and Android – need to play an appropriate role in ensuring the delivery of key public policy goals.
42. This does not imply that such organisations should be subject to additional statutory regulation. But it does mean that it is important to recognise that they need to form part of the solution to empowering and protecting European citizens. In well-functioning markets, these goals may be achieved automatically through competition between players in the market (by operators competing to offer effective and simple-to-use parental controls as a selling point in their retail propositions, for example). In other cases, formal models of self-regulation across the sector should be developed. These market and self-regulatory solutions work best when there is a high level of alignment of incentives between the interests of companies and citizens. In some instances, relating to matters of significant public policy, there may be a role for politicians or regulators to encourage industry players to develop appropriate market solutions without imposing formal regulatory processes (an example being a recent intervention by David Cameron, the UK's Prime Minister, who called on industry to strengthen its measures to tackle online pornography). Statutory interventions should be used only when markets cannot be relied on to deliver desired outcomes (which might be the case

when there are market failures such as externalities, as a result of which companies' interests may not be perfectly aligned with those of citizens). In such circumstances, given the risks of unintended consequences, great care will need to be taken to ensure any extensions of scope are proportionate and practical.

### **Responses to consultation questions**

43. In this section, we respond to the consultation questions set out in the Green Paper. The questions are grouped together below in the same way as in the consultation document. In instances when several consultation questions relate to different aspects of the same topic, we provide overarching answers that cover these questions together. We have not directly responded to individual questions where we have no specific points to make beyond those articulated in our key principles.

## **GROWTH AND INNOVATION**

### **Market considerations**

#### **Questions for consultation:**

- (1) What are the factors that enable US companies to establish a successful presence in the fragmented EU market despite language and cultural barriers, while many EU companies struggle? What are the factors hindering EU companies?
- (2) What are the factors affecting the availability of premium content? Are there currently practices relating to premium content at wholesale level which affect market access and sustainable business operations? If so, what is the impact on consumers? Is there a need for regulatory intervention beyond the application of existing competition rules?
- (3) Are there obstacles which require regulatory action on access to platforms?

44. The factors that enable US companies to establish a successful presence in the fragmented EU market (Q1) were discussed above in the section on “Key principles”: these relate to the economies of scale and scope, and network effects, that US companies enjoy as a result of their large and relatively homogenous domestic market, along with the unique global appeal of much US content, such as Hollywood films and TV dramas. This contrasts with Europe, where the TV sector (as with other kinds of audiovisual content) comprises distinct national markets characterised by different languages, cultures and social norms. These economic advantages mean that US companies are better placed than European ones to distribute content or launch services in international markets, including, perhaps paradoxically, European countries, as their scale provides vital benefits that underpin their expansion into new markets, such as access to finance, the ability to spread risk, etc.

45. Notwithstanding the economic advantages enjoyed by US companies, it should be reiterated that the EU competes effectively in many global audiovisual markets, such as those for TV programme and format exports. As we discussed above, this can be

attributed to a vibrant ecology comprising both public and private sector organisations, and supported by an effective system of public policy interventions.

46. Turning to Q2 and Q3, BSAC has two general observations to make on competition issues. First, at both the national and European level, it is important that competition authorities take a forward-looking and dynamic approach that is able to respond to the impact of convergence – one consequence of which is the blurring of market boundaries – when considering market definitions. Second, for new kinds of digital platforms offering audiovisual content – such as VOD services and App Stores – similar rules on access should apply as to existing platforms (e.g. the need for rights-holders and distributors to be able to access services on open, transparent, fair and non-discriminatory terms) to prevent them from becoming bottlenecks.

### **Financing models**

#### **Questions for consultation:**

(4) Do the current AVMSD requirements provide the best way to promote the creation, distribution, availability and market appeal of European works?

(5) How will convergence and changing consumer behaviour influence the current system of content financing? How are different actors in the new value chain contributing to financing?

47. On Q4, BSAC's view is that the current requirements in the AVMS Directive provide an appropriate baseline for promoting the production and distribution of European works, while the framework allows individual Member State governments to set more detailed rules that are tailored to the specific circumstances in their country. We would note that for many of the key measures in the AVMS Directive, stricter national measures exist in the UK that go beyond the minimum requirements set out in European legislation. Convergence raises new challenges relating to the promotion and discoverability of European content – PSB programming and originated content more generally – as rules such as EPG prominence that apply to linear TV platforms do not typically exist in the on-demand space. We discuss this issue in our response to Q15 below.

48. Turning to Q5, convergence and globalisation are having a dramatic impact on content financing and business models. For many genres of content, some broadcasters are less willing or able to fully fund programming or offer the same budget levels that they did in the past. At the same time, for content creators, there are greater opportunities to fund high-end programmes from multiple sources across windows and territories, including new VOD services. As UK broadcasters' commissioning budgets come under growing pressure, indies are increasingly sharing the risk of creating content with broadcasters. According to the most recent PACT census<sup>6</sup>, indies contribute around £200 million per annum to the cost of programme financing, a figure that has remained stable throughout the recession. The main source of external funding that indies bring

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<sup>6</sup> "Independent Production Sector Financial Census and Survey 2013, PACT, June 2013

to the table are international sales, which now account for 30% of total sector revenues. In addition, brands and advertising agencies are becoming much bigger investors in content in some genres. Developments such as these are changing the balance of power. Regulatory interventions should go with the grain of such market developments, and should not restrict the freedom of broadcasters, production companies and other content creators to innovate and seek new revenue streams and funding sources.

## **Interoperability of connected TV**

### **Questions for consultation:**

(6) Is there a need for EU action to overcome actual or potential fragmentation and ensure interoperability across borders? Is there a need to develop new or updated standards in the market?

49. BSAC's view is that, in general, markets should be left to set standards, as this is most likely to lead to the most efficient solutions. However, we recognise that there may at times be coordination problems that policymakers can help to address. As with GSM for mobile or the DTT transmission standard DVB-T2, there may be particular areas in which national governments or the EU can facilitate best practice or help to set industry standards.

## **Infrastructure and spectrum**

### **Questions for consultation:**

(7) How relevant are differences between individual platforms delivering content (e.g. terrestrial and satellite broadcasting, wired broadband including cable, mobile broadband) in terms of consumer experience and of public interest obligations?

(8) What frequency allocation and sharing models can facilitate development opportunities for broadcasting, mobile broadband and other applications (such as programme-making equipment) carried in the same frequency bands?

(9) What specific research needs with regard to spectrum have to be addressed to facilitate such development?

50. On Q7, there are of course important differences between platforms in terms of their characteristics, capabilities, capacity, scale, usage, and so on. Historically, regulation has been driven in part by spectrum scarcity: with a limited number of channels, there was merit in intervening to ensure an appropriate mix of content and services. This rationale falls away with new digital platforms with fewer (e.g. linear digital television) or no (e.g. IP-delivered services) capacity constraints. Nonetheless, the legacy linear TV platforms continue to account for a majority of TV viewing, and are likely to do so for some time. As such, interventions such as EPG prominence rules continue to play an important role. As viewing on new platforms grows, it is important that regulatory

interventions adapt to reflect this. An overriding concern must be to ensure that regulations do not tilt the playing field in favour of or against any particular platform.

51. On Q8, we can expect ever-growing demands on spectrum, which will lead to growing pressure for more efficient approaches to spectrum usage. As equipment manufacturers rely on economies of scale to ensure optimal use is made of spectrum, the European Commission should play a role in making sure these scale economies are available. This will be important in achieving a harmonised approach to new licensing approaches, such as authorised shared access (essentially a controlled approach to sharing spectrum bands).
52. Another issue that may work against harmonisation is the number of institutions involved in spectrum policy in Europe: as well as the Commission, the list includes the International Telecommunication Union (ITU), the European Conference of Postal and Telecommunications Administrations (CEPT), the Radio Spectrum Policy Group (RSPG), and all the national regulators. Although it will be difficult to address this situation, any rationalisation, either in the institutions themselves or (more realistically) the ways in which they work together, could help to achieve greater clarity and transparency in decision-making responsibilities.
53. With respect to Q9, it is not clear what forms of research are envisaged. If this is a question about technical research, BSAC's view is that such research is generally best left to the market to conduct.

## VALUES

### Regulatory framework

#### Questions for consultation:

(10) Given convergence between media, is there evidence of market distortion caused by the regulatory differentiation between linear and non-linear services? If yes, what would be the best way to tackle these distortions while protecting the values underpinning the EU regulatory framework for audiovisual media services?

(11) Is there a need to adapt the definition of AVMS providers and / or the scope of the AVMSD, in order to make those currently outside subject to part or all of the obligations of the AVMSD or are there other ways to protect values? In which areas could emphasis be given to self/co-regulation?

(12) What would be the impact of a change of the audiovisual regulatory approach on the country of origin principle and therefore on the single market?

(13) Does increased convergence in the audio-visual landscape test the relationship between the provisions of the AVMSD and the E-Commerce Directive in new ways and in which areas? Could you provide practical examples of that?

(14) What initiatives at European level could contribute to improve the level of media literacy across Europe?

54. The current approach to content regulation in AVMS is underpinned by two key boundaries which create three categories of services: traditional linear TV (including new forms of delivery such as live streaming) is subject to the full range of AVMS rules (mostly inherited from the earlier Television Without Frontiers Directive), non-linear (i.e. on demand) services providing TV-like content are subject to a lighter set of rules, while all other services fall outside the scope of the Directive.
55. In a converged world – especially on connected TVs, when linear and non-linear services sit alongside each other, and may even be integrated in a common EPG (as with YouView) – these boundaries will undoubtedly move. A recent Lords Select Committee on Communications report on media convergence argued that the key distinction in the future should be between professionally-produced TV-like content (whether linear or non-linear) and everything else.<sup>7</sup>
56. The key point that BSAC would like to emphasise is that the location of the appropriate boundaries is shifting and will continue to evolve over time as convergence proceeds. New kinds of content, and fusions of different kinds of content (e.g. apps comprising text, audio and video), will test the boundaries further in ways that cannot be accurately predicted.
57. This implies that any attempts to fix precise boundaries in legislation will, sooner or later, become out of date, leading to perverse incentives and inhibiting desirable outcomes. This is a key example of the need (as set out in the “Key principles” section above) to build greater flexibility into the regulatory model. For AVMS, this may mean in due course changing the fixed definitions that are hard-wired in legislation and replacing them with a process that allows the specification of the boundaries to be modified over time, without the need to change the Directive itself.
58. To provide regulatory clarity, this new approach should be underpinned by a set of criteria that would determine what kinds of content and services fall on either side of the boundaries. A key criterion would be consumer expectations of different services (which national regulators could be required to survey at regular intervals). Other factors – such as audience size or substitutability with TV content – are also likely to be relevant. These criteria would ensure that small or emerging services are not faced with disproportionate regulations, but that if they grow to a point when their scale and consumer expectations make them credible mainstream platforms for TV content, then they would face the same rules as other TV platforms.
59. On Q12, the country of origin principle is a cornerstone of the AVMS Directive (and, before that, the Television Without Frontiers Directive). BSAC would emphasise that the principle is well-understood and plays a vital role in promoting the single market. While its application can, at times, lead to tensions between countries in which services

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<sup>7</sup> See <http://www.publications.parliament.uk/pa/ld201213/ldselect/ldcomuni/154/154.pdf>

are located and the ones in which those services are consumed, cooperation procedures exist to resolve issues of this nature. For this reason, the country of origin principle remains preferable to any alternative solutions (such as a country of reception principle and standardisation of rules across Member States).

60. In the future, audiences are likely to be exposed to a greater range of content from suppliers based outside their own country, which has the potential to exacerbate tensions if these services offer content that does not meet audience expectations in countries where the content is consumed. At the same time, BSAC acknowledges that our call for greater flexibility in the European regulatory framework could, at least in theory, challenge the clarity and effectiveness of the country of origin principle. However, we do not believe that these factors undermine the continued importance of the country of origin principle. Rather, we think that the strength of a more flexible audiovisual regulatory framework lies in part in its ability to confront these tensions and develop appropriate solutions to them. For country of origin, this might include, for example, the maintenance of a common core regulatory baseline to which all Member States must adhere, or measures to enhance the existing cooperation procedures.
61. Turning to Q14, media literacy can cover a range of different aspects relating to consuming, understanding, evaluating and creating media. One consequence of convergence is that people will increasingly access content from a greater variety of sources on connected devices, and this content will be subject to different regulations depending on its nature and form of delivery. Another consequence is that we are moving towards a more self-regulatory environment in which people take greater responsibility for what they consume, with regulators having less power to shape their choices.
62. For these reasons, media literacy is becoming increasingly important for people of all ages. As the AVMS Directive states: “Media-literate people are able to exercise informed choices, understand the nature of content and services and take advantage of the full range of opportunities offered by new communications technologies.”<sup>8</sup> In the context of this consultation, it is particularly important to ensure that users have a sufficient understanding of the opportunities that are available and the tools at their disposal to enable them to make informed choices, given the different regulatory environments that exist in a converged world.
63. BSAC’s view is that media literacy should primarily be addressed at a national level, with industry and government bodies working together, as appropriate, to deliver initiatives that reach people in the most effective manner. In addition to media literacy initiatives developed by individual companies (such as the BBC’s First Click campaign and BSkyB’s Sky Skills Studios) and public sector organisations such as the British Film Institute and Northern Ireland Screen, there are a number of cross-sectoral schemes operating in the UK, including:

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<sup>8</sup> See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:332:0027:0045:EN:PDF>

- **Media Smart (mediasmart.org.uk)** – a media literacy programme for school children aged 6 to 11 years old, which focuses on advertising. It provides educational materials to primary schools that teach children to think critically about advertising in the context of their daily lives, using real examples of advertising to teach core media literacy skills. Media Smart is funded by UK advertising businesses, and is supported by the UK and EU governments.
- **AskAboutGames.com** – a website which answers questions that parents and players have about video game age ratings and provide advice on how to play games responsibly, operated by the Association for UK Interactive Entertainment (UKIE) as part of its wider Control.Collaborate.Create. campaign.
- **ParentPort (parentport.org.uk)** – a one-stop site set up by the UK’s media regulators that directs people who wish to make a complaint to the right regulator, as well as providing advice on subjects such as keeping children safe online.

64. While national companies and regulatory bodies are best placed to target media literacy initiatives at citizens in their countries, we welcome targeted financial support from the EU – for example, through the planned Creative Europe initiative and other relevant programmes – for the development of media literacy among all sections of the population, particularly children, young adults, parents and carers. This support might build on existing European schemes such as the Safer Internet Programme, which helps to finance projects, such as the annual Safer Internet Day, aimed at creating a safer online environment for young people. We also believe that initiatives to share best practice between countries would be useful at the European level, including methods of evaluating the impact and effectiveness of media literacy initiatives.

## Media freedom and pluralism

### Questions for consultation:

(15) Should the possibility of pre-defining choice through filtering mechanisms, including in search facilities, be subject to public intervention at EU level?

(16) What should be the scope of existing regulation on access (art. 6 Access Directive) and universal service (art. 31 Universal Service Directive) in view of increasing convergence of linear and non-linear services on common platforms? In a convergent broadcast/broadband environment, are there specific needs to ensure the accessibility and the convenience to find and enjoy 'general interest content'?

65. BSAC agrees that search and discoverability are as important, if not more so, in a converged world than in the traditional linear TV space, in which the range of options is more limited. Discoverability of PSB content has traditionally been dealt with by policymakers through prominence rules that apply to electronic programmes guides (EPG). These rules were designed for a linear environment, but with more viewing now

taking place on new platforms and on a time-shifted basis, it may be necessary to consider whether they remain sufficient.

66. In the UK, the Department for Culture, Media and Sport (DCMS) recently published an action plan for the audiovisual sector,<sup>9</sup> in which it committed to consult on how the prominence of PSB channels can be maintained in the converged landscape. DCMS states that (p9): “This will support the ability of our Public Service Broadcasters to raise revenue to invest in original UK content, so that they can continue to deliver the quality and variety of content enjoyed by UK viewers”. The approach taken by DCMS suggests that no changes currently need to be made to the European legislative framework to enable Member State governments to adapt existing rules on access and discoverability to the demands of the future. However, policymakers should keep this under review, given uncertainty about market and technological developments over the next decade and beyond.

### **Commercial communications**

#### **Questions for consultation:**

(17) Will the current rules of the AVMSD regarding commercial communications still be appropriate when a converged experience progressively becomes reality? Could you provide some concrete example?

(18) What regulatory instruments would be most appropriate to address the rapidly changing advertising techniques? Is there more scope for self/co-regulation?

(19) Who should have the final say whether or not to accept commercial overlays or other novel techniques on screen?

67. Traditional linear TV channels will continue to account for a significant amount of consumers’ viewing for some time to come, notwithstanding the growing levels of consumption of on-demand services. BSAC’s view is that, for so long as linear TV channels remain part of the overall mix of audiovisual media services, it will still be appropriate to maintain specific provisions for commercial communications on linear services. It is worth noting that in many areas, national regulators impose stricter rules in Member States than those required under European legislation. In the UK, for example, Ofcom imposes a limit on the daily average number of minutes of spot advertising that can be shown (seven minutes per hour for public service channels and nine minutes for all other channels) in addition to the 12 minutes per hour limit specified by the AVMS Directive.

68. While we recognise the continuing need for rules on commercial communications on linear services, BSAC believes that, given the changes in technology and audience behaviour that are occurring in the sector, any future changes to European legislation should provide greater flexibility by focusing more on principles (such as identification

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<sup>9</sup> “Connectivity, content and consumers: Britain's digital platform for growth”. See <https://www.gov.uk/government/publications/connectivity-content-and-consumers-britains-digital-platform-for-growth>

of advertising, qualitative standards and protection of minors) and less on operational details. Traditional forms of advertising are coming under increasing pressure – the most notable being the ability for people with personal video recorders to record programmes and skip past spot adverts. In order to safeguard high levels of investment in content, broadcasters need to be able to experiment with new forms of advertising. There has been some innovation within the current AVMS framework: in the UK, for example, broadcasters have sought to offer advertisers new ways to deliver commercial messages through product placements, interactivity (e.g. ITV's deal with Shazam to allow consumers to interact with brands on second screen devices during ad breaks) and split screen advertising (e.g. Channel 4's partnership with Betfair for in-vision adverts to air in the run-up to live races). However, the AVMS rules do not provide significant room for manoeuvre, and prevent broadcasters from experimenting further. A more principles-based approach in European legislation would enable regulators to keep the rules on commercial communications under review and to make adjustments over time, when they are needed, to maintain an appropriate balance between giving industry players the freedom to innovate whilst continuing to provide sufficient protections to audiences.

69. Turning to non-linear services, BSAC believes that there is greater scope for self- and co-regulatory models, and would point to the Advertising Standards Authority (ASA) in the UK as an exemplar. The ASA operates as the one-stop shop for advertising complaints across all media, comprising elements of both self- and co-regulation. Ofcom contracted out the regulation of broadcast advertising to the ASA in 2004. The ASA entered into a co-regulatory partnership with Ofcom to regulate advertisements accompanying VOD services in 2009. The ASA is also an independent self-regulatory body for non-broadcast advertising in the UK. Its scope evolves over time to reflect market developments – in 2011, for example, its online remit was extended to include marketing communications on companies' own websites and in other non-paid-for space under their own control.

## **Protection of minors**

### **Questions for consultation:**

- (20) Are the current rules of the AVMSD appropriate to address the challenges of protecting minors in a converging media world?
- (21) Although being increasingly available on devices and platforms used to access content, take-up of parental control tools appears limited so far. Which mechanisms would be desirable to make parents aware of such tools?
- (22) What measures would be appropriate for the effective age verification of users of online audiovisual content?
- (23) Should the AVMSD be modified to address, in particular, content rating, content classification and parental control across transmission channels?

(24) Should users be better informed and empowered as to where and how they can comment or complain concerning different types of content? Are current complaints handling mechanisms appropriate?

(25) Are the means by which complaints are handled (funding, regulatory or other means) appropriate to provide adequate feedback following reports about harmful or illegal content, in particular involving children? What should be the respective roles/responsibilities of public authorities, NGO's and providers of products and services in making sure that adequate feedback is properly delivered to people reporting harmful or illegal content and complaints?

70. The challenge of establishing an effective model of consumer protection was discussed under the “Key principles”, where we argued that a well-functioning system needs to include content labelling and the tools necessary to empower consumers to protect themselves and their families. BSAC’s response here focuses on the questions that relate most directly to this key principle.

71. In terms of content labelling, guidance and/or age-based classifications already exist for most forms of professionally-produced content on both linear and non-linear services. In the UK, broadcasters have developed and refined their own guidance systems, which provide detailed information for each individual programme, over many years. This existing approach is well-understood and trusted by viewers, and underpins the parental control systems used in broadcasters’ VOD services. The BBFC, which has long provided age ratings for films and DVDs, now also provides ratings, on a self-regulatory basis, for an increasing number of online services, and from this September mobile operators in the UK will use a BBFC classification framework to filter video and website content available via mobile networks. Models such as the rating tool currently being trialled by the BBFC and Nicam (described above) suggest that it should be possible to develop a workable solution to classify user-generated content.

72. Given the range of solutions being provided by market participants in the online space, BSAC’s view is that there is no need for European policymakers to take action at this stage. At the Member State level, national regulators should continue to monitor classification systems across different services and devices and to ensure they continue to meet audience expectations. Over time, as consumption of audiovisual content via connected TVs and other converged devices grows, it is possible that these expectations will evolve; for example, audiences in the future may express a preference for greater standardisation of classification systems for similar kinds of content. Market incentives should encourage service providers to adapt their models to keep up with audience demand, guided by their own audience feedback and the regulators’ market surveys.

73. Turning to the tools that need to form part of an effective system, device manufacturers, ISPs, mobile operators, browsers, search engines and individual services (including those regulated by ATVOD in the UK) have all implemented parental control mechanisms that are available in the market. Platform and service providers are also developing more comprehensive solutions that work across multiple devices or services. For example, Sky’s parental controls on its pay-TV set-top box have been extended to cover its VOD services as well as broadcast linear channels. ISPs such as

BT and Sky have developed “whole-home” solutions to filter web content across all connected devices in the home.

74. BSAC recognises that there is evidence that suggests that take-up of parental controls remains limited. We believe that this should be dealt with in part by greater emphasis on media literacy (see above). However, we also acknowledge that the low take-up is likely to be due in part to a degree of consumer confusion, given the wide range of parental control solutions available, and the fact that no single solution provides complete protection across all services on all devices in all places (at home and on the move), as Figure 2 shows.

**Figure 2: Pros and cons of different levels of network and infrastructure tools to control access to audiovisual content**

Infrastructure or network	Pros	Cons
Device (e.g. connected TV set, smart-phone or tablet)	Single set of switches can cover content accessed via range of apps and services on the device	iOS and Android do not currently allow age-based switches to apply to individual content inside third-party VOD services  Each device needs to be configured separately
ISP (e.g. Sky, BT)	Can cover IP-delivered services on all devices used in the home	Does not work for mobile devices outside the home
Mobile operators (e.g. O2, EE)	Can cover all mobile devices wherever they are used while accessing the mobile network	Does not cover mobile devices (or other devices, e.g. connected TVs) using Wi-Fi networks
Browser (e.g. Chrome, Safari)	Can cover all browser-accessed services on multiple devices	Does not cover apps
Search engine (e.g. Google, Bing)	Can cover search for all browser-accessed services on multiple devices	Does not cover apps
Individual apps or websites (e.g. iPlayer, Lovefilm)	Provides tailored settings for content on the app/website wherever it is accessed	Only applies to the individual service

75. As the table indicates, the lack of a perfect solution is not due to an absence of willingness by companies to engage, but rather because each company has only limited scope in which it can act. For example, ISPs cannot control access to content on mobile devices when they are used outside the home, while mobile operators cannot control access on devices when they are using Wi-Fi networks (thereby bypassing their own networks).

76. Having said that, there is almost certainly scope for further cross-industry initiatives to achieve simpler, more effective and more comprehensive solutions that may achieve greater traction with parents. BSAC would emphasise that any such models should be

based on self-regulatory principles, and led by industry. Governments can play a valuable role in promoting and supporting such initiatives, and encouraging industry to act when needed – as the UK’s Prime Minister did recently when he announced an industry taskforce to tackle online pornography.<sup>10</sup> There may also at times be value in the Government or regulators playing a coordinating role in facilitating market-led solutions, given the range of industry stakeholders involved. Statutory intervention should be reserved for the most serious circumstances (as an example, the BBFC and ATVOD have proposed further intervention to strengthen consumer protection tools to make it more difficult for under 18’s to access free hardcore pornography online).

### **Accessibility for persons with disabilities**

#### **Questions for consultation:**

(26) Do you think that additional standardisation efforts are needed in this field?

(27) What incentives could be offered to encourage investment in innovative services for people with disabilities?

77. Access services play a vital role in ensuring that visually, hearing and cognitively impaired people can enjoy as wide a range of audiovisual content as possible. In the UK, broadcasters take their responsibilities regarding the provision of television access services very seriously, and in many cases significantly exceed their regulatory targets. Ofcom’s Television Access Services report for 2012 showed that the BBC and Channel 4 subtitle virtually 100% of programming on all of their services, while ITV subtitled more than 90% of programmes across most of its channels. The public service broadcasters and Sky have voluntarily committed to deliver 20% audio description on all or most of their (non sports) channels.<sup>11</sup> Platform operators offer dedicated tools to promote the accessibility of their services: for example, the Sky Talker provides speech access to programme and channel information on Sky’s set-top boxes, making it possible for blind and partially sighted people to browse and choose programmes.

78. The proliferation of new kinds of content and services online poses particular challenges in terms of accessibility. For VOD services offering TV programmes and films, it should technically be feasible to offer the access services already developed for their broadcast or DVD windows. This is complicated, however, by the large number of different technical standards that are currently used, for non-linear services in particular, in relation to authoring, distribution to platforms and final distribution to the end user. This creates a barrier to the provision of access services, as a single piece of content may need to be provided in a large number of formats if it is to be made available with access services across all the platforms through which it is provided to consumers. This multi-versioning inevitably creates additional costs which may be prohibitive. BSAC believes that there is potentially scope to encourage greater levels of

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<sup>10</sup> See <https://www.gov.uk/government/speeches/the-internet-and-pornography-prime-minister-calls-for-action>

<sup>11</sup> See <http://stakeholders.ofcom.org.uk/market-data-research/market-data/tv-sector-data/tv-access-services-reports/2012-report>

provision of access services through standardisation of technical delivery solutions in certain areas.

79. In the UK, ATVOD is currently working with technical experts and non-linear service providers to try to identify a set of technical standards which might be adopted as standard across the sector, thus allowing a single content asset to be capable of distribution to consumers across a wide range of platforms with access services enabled. There may be further benefits across Europe if the Commission were to look to build on initiatives such as this to encourage the development of pan-EU technical standards for the provision of access services.
80. More generally, while it would be desirable for access services to be available for as much content as possible, it will often be prohibitively expensive to provide professional-quality access services for all content that is available online, including user-generated content. Companies such as Google are experimenting with computer-assisted generation of subtitles (using speech recognition algorithms), such as the automatic captions service offered by YouTube. While such innovations are welcome, and could potentially be used to provide access services for a limitless volume of content, they do not yet provide the same quality of output as professionally-produced access services. While companies of the size of Google do not require financial incentives to invest in such services, there may be merit in considering incentives to support smaller companies wishing to explore innovative new techniques relating to access services, or companies who provide content that delivers significant public value to European citizens but who cannot afford to offer access services.