

Campaign Against Censorship Response to Open consultation on Audience protection standards on Video-on-Demand (VoD) Services, 2021

Note: Respondents were asked to provide their views by responding to a number of questions. For ease of reference, the text of each question is given first, followed by the CAC's response. Although the following is a copy of the both the relevant questions and the CAC's responses, it has been reformatted into a more readable document.

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The response was prepared by Adam Scarborough (member) and E.A.C. Goodman (Chair) on behalf of the Campaign Against Censorship.

Q 1: Should VoD services not currently regulated in the UK be brought within UK jurisdiction? Yes/No? Please explain your reasoning.

CAC response: *No. First, because one purpose of VoD services is to make available in the UK material not available in a jurisdiction where different and/or stricter regulation or censorship applies and so make creative work available to a wider audience and as it was intended to be seen. Second, because smaller VoD providers may not be able to afford to pay fees to a regulator in two or more countries at once and if they cease or contract their business the choice for viewers will be reduced.*

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

CAC response: *As you admit in Section 3, it would be difficult to impose UK regulation on VoD companies based overseas. Also non-domestic providers have their own rules and regulations. To build trust with companies, they need to feel comfortable in their environment, which any government proposal should allow. The question assumes that some firms but not others would be selected for regulation. This is contrary to the British sense of fairness.*

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

CAC response: *Notification is all that's required. Licensing may develop into censorship. Any regulator must be non-political and responsible for maintaining customers' liberties and privacy. The rights of all within the creative media, all who provide material for escape and pleasure, should be upheld. More government intrusion will damage them.*

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

CAC response: *No additional obligations should be imposed because none are needed; if content is not considered hazardous in other media the same content does not become hazardous by being put through a computer. Fear and blame of the medium must not be used by government against VoD companies. Such tactics are incompatible with democracy and a free society.*

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

CAC response: *No, because the Broadcasting Code was developed specifically for use by the BBC. Much of VoD material, even as stated in your consultation document, is acceptable within the boundaries of the UK. There are no redeeming factors to bringing other VoD services under the Broadcasting Code. This would have an overall effect of censorship and stifle creativity. All VoD services must remain autonomous.*

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 apply and to which services?

CAC response: *The Broadcasting Code needs to be more specific in clarifying how free speech/expression and the rights of VoD customers will be protected from censorship. The compilers of the Code should not restrict information available to VoD users nor impose self censorship to ensure compliance.*

Impartiality standards should not apply to 'niche' VoD services intended for viewers with a particular set of beliefs, religious or secular, provided the material shown does not break the criminal law. Services dedicated to films and programmes suitable for over-18s should be able to show them uncensored provided that they use strong safeguards to prevent access by minors and provided that no criminal offences were committed for the purpose of making the items shown. News and current affairs programmes should be free from the requirement to submit all footage to a censor before first showing.

Q7: Do you think that 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?

CAC response: *Yes. Current protections are more than adequate. Additional regulation will mean more administrative costs and destroy businesses.*

Users of VoD need no protection. They are conscious of what they want from the services provided. Mechanisms already exist to prevent minors accessing material intended for adults. These are already enforced by parents and guardians using appropriate controls. It must not be used as an excuse for State censorship of adult material. No government serious about civil liberties would use the excuse of "protecting children" to censor adult material. It is not the responsibility of corporate bodies to protect minors. It is the responsibility of parents and guardians. The mental health of minors must not be used as an excuse for censorship of adults.

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.

CAC response: *Yes, but increased conformity must not be used as an excuse for increased censorship. Increased conformity would make VoD easier for customers to use but the number and strictness of the restrictions should be kept as low as possible across the board (and for exceptions please see response to Question 6.)*

Q9: Should a UK classification/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.

CAC response: *No, because a mandatory classification system very easily becomes a censorship system, demanding that items should be cut or banned. A mandatory system would also mean more bureaucracy and fees, leaving both VoD producers and service users potentially with more costs along with statutory requirements. Such a warning system would be unenforceable due to so many providers being based outside the UK.*

What types of content are considered most appropriate to require classification/warnings is something which changes over time. They can change overnight in the aftermath of an outrage or a disaster. Therefore it is not possible to make or fix decisions about content in advance.

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.

CAC response: *The impact of the proposals would depend on how they were implemented and by whom and how costs were allocated. If regulation is strict small providers may be forced out of business by a “chill factor”. Audiences need no protection except from censorship. Not being in the business of VoD provision ourselves, the Campaign is unable to provide financial data.*

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 would additional costs be passed on to consumers, for example through higher subscription fees?

CAC response: *It is not possible to assess the impact of the proposals because to do so involves too many variables. The Campaign Against Censorship does not accept that “increased audience protection” is a benefit. Protection may be appropriate for minors, but the government of a free state does not offer to shelter its adult citizens as though they were children.*

On costs, please see the response to Question 10.

British audiences value transparency and freedom of choice. Any proposals must not infringe these rights. VoD must remain autonomous, loyal to service users, not to controlling State censorship. A society that values liberty also allows individuals to decide what is or is not unacceptable as opposed to having the State decide for them.

Response ends.