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# Video-sharing platforms: who needs to notify to Ofcom?

Guidance notes

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[Guidance notes: Video-sharing platforms – who needs to notify to Ofcom?](#) – Welsh overview

**GUIDANCE:**

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# 1. Overview

New regulations applying to UK-established video-sharing platform (VSP) services came into force on 1 November 2020. From 6 April 2021, VSP providers in UK jurisdiction are legally obliged to submit a formal notification of their service to Ofcom.

This guidance is intended to help providers understand:

- a) whether they fall within scope of the definition of a VSP for the purposes of the Communications Act 2003 (“the Act”) – see [section 3](#) of this document, including
- b) whether they fall within UK jurisdiction – [section 4](#) of this document; and
- c) when and how they may need to notify their service to Ofcom – [section 5](#) of this document.

Under the Act, VSP providers are required to take measures to protect users of their services from harmful material. We will publish separate guidance for VSP providers around their regulatory obligations in this area (referred to in this document as the “guidance on the regulatory requirements”).

Providers can email Ofcom at [VSPRegulation@ofcom.org.uk](mailto:VSPRegulation@ofcom.org.uk) if they have any questions about the notification and scope requirements. However, we are unable to provide legal advice about individual services and it remains the responsibility of each provider to satisfy the relevant legal obligations around notification.

## How and when to notify a video-sharing platform service – in brief

This guidance focuses on the criteria that make up the definition of a VSP in the Act, in order to help service providers assess whether:

- their service, as a whole or a ‘dissociable section’, has the principal purpose of providing videos to the public;
- their service has the essential functionality of providing videos to the public;
- the service is provided via an electronic communications network;
- the service is provided on a commercial basis;
- the service is provided by a person who has general control over the organisation of videos, but not over what videos are available to users; and
- the provider of the service is within UK jurisdiction.

The criteria in the Act are applied cumulatively. All the criteria are important in making an assessment and should be given careful attention by providers.

Providers will need to closely consider whether the provision of videos to the public is:

- the ‘principal purpose’ (i.e. the main activity or objective) of the platform as a whole or of a ‘dissociable section’ of it (i.e. a part of the platform that is sufficiently distinct from the rest of it); or
- an ‘essential functionality’ of the service as a whole (i.e. where the provision of videos contributes significantly to the commercial and functional value of their service).

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Providers will also need to consider the level of control they have over the range of video content available on their service and its organisation. Where a provider has control over what videos are available on their service, this would suggest that they will need to notify it as an on-demand programme service (ODPS) rather than a VSP.

Providers will need to determine whether they have the required connection with the United Kingdom to be in UK jurisdiction. They will need to consider the type of economic activity they are pursuing in the UK and their centre of activities regarding the VSP service, as compared to any other establishments in the European Economic Area (EEA). Where a VSP service provider is not itself present in the UK or EEA, it may be relevant to consider the establishment of other entities within the same group.

This guidance also sets out when and how a provider will be expected to notify, and outlines the process and information required.

## 2. Background and legislative context

### Legal framework

- 2.1 [Part 4B of the Act](#) transposes the new European regime for VSP services under the revised [Audiovisual Media Services Directive](#) (“the AVMSD” or “the 2018 Directive”). The AVMSD sets the regulatory framework underpinning the audiovisual services single market in the European Union.
- 2.2 Under the terms of the Withdrawal Agreement, the UK committed to implementing EU legislation up until the end of the transition period. Part 4B of the Act was introduced under [Government regulations made on 30 September 2020](#) and came into force on 1 November 2020. It continues to have effect as “retained EU law”. The regulatory framework introduced under Part 4B of the Act was amended through a statutory instrument which came into force at the end of the transition period.<sup>1</sup> Further amendments are being made under a second statutory instrument, which was laid on 24 February 2021 and is, as of the publication of this guidance, undergoing parliamentary scrutiny.<sup>2</sup>
- 2.3 In drawing up this guidance, we had regard to relevant Articles and Recitals of the AVMSD.
- 2.4 The regulation of UK-established video-sharing platforms will be superseded by the introduction of the Online Safety Bill. In December 2020, in its [full response to the Online Harms White Paper](#), the Government confirmed its intention to eventually repeal Part 4B of the Act. It also confirmed its intention to appoint Ofcom as the relevant regulator of the new online harms framework. This legislation is expected to apply to a much wider range of online services, including services which are not established in the UK. Ofcom will operate the VSP framework until such time as it is no longer in force and will ensure that there is support for services transitioning between the VSP and online harms frameworks.

### VSP criteria in the Act

- 2.5 Section 368S of the Act sets out the meaning of a ‘video-sharing platform’ service. The criteria set out in the Act are applied cumulatively; a service or dissociable section of a service must meet at least one of the criteria in subsection 1 and all the criteria in subsection 2 of section 368S to be considered a VSP.
- 2.6 A service or a dissociable section of a service may be a VSP if it meets either of the following criteria under section 368S(1):

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<sup>1</sup> The [Audiovisual Media Services \(Amendment\) \(EU Exit\) Regulations 2020](#) set out when a VSP provider will fall under UK jurisdiction after the end of the transition period.

<sup>2</sup> The [Audiovisual Media Services \(Amendment\) Regulations 2021](#) concern Ofcom’s duties as regards the maintenance of a list of VSP providers within UK jurisdiction and the basis for Ofcom’s co-operation with EEA states following the UK’s exit from the EU.

- a) the provision of videos to members of the public is the principal purpose of the service or of a dissociable section of the service; or
  - b) the provision of videos to members of the public is an essential functionality of the service.
- 2.7 To be subject to regulation as a VSP, the service or dissociable section of a service must also meet all of the following criteria, as set out in section 368S(2) of the Act:
- a) it is provided by means of an electronic communications network;
  - b) it is provided on a commercial basis;
  - c) the person providing it does not have general control over what videos are available on it, but does have general control over the manner in which videos are organised on it (which includes being organised automatically or by way of algorithms, in particular by displaying, tagging and sequencing); and
  - d) that person has the required connection with the United Kingdom.
- 2.8 In this context, a ‘provider’ or ‘VSP provider’ refers to the person who provides the relevant VSP service and includes a body of persons corporate or unincorporated.
- 2.9 Subsections 3 to 9 of section 368S of the Act, as amended by the [Audiovisual Media Services \(Amendment\) \(EU Exit\) Regulations 2020](#), set out the circumstances in which a VSP provider will be determined to have the required connection with the United Kingdom. These are set out full in [section 4](#) of this document.

## VSP providers’ notification obligations

- 2.10 From 6 April 2021, VSP providers in UK jurisdiction are legally obliged to notify their services to Ofcom. Existing providers have one month to notify their services, by 6 May 2021 (we refer to this period as ‘the notification window’).<sup>3</sup> Services commencing after 6 April are required to make an advance notification to Ofcom of their intention to provide a service. The notification process is outlined in more detail in [section 5](#) of this document.
- 2.11 It is the responsibility of providers, taking independent legal advice where necessary, to make their own assessment of whether their service meets the statutory criteria and therefore must be notified to Ofcom.
- 2.12 Where it appears to Ofcom that a service meets the statutory criteria but has not been notified, Ofcom has statutory powers to request information in order to make an assessment, and to take enforcement action if a provider has failed to notify. This can include a financial sanction and directing the provider to notify.

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<sup>3</sup> Under the Act Ofcom has the power to charge regulatory fees to VSP providers from April 2022. We will consult separately on an appropriate fee structure.

2.13 This non-statutory guidance is designed to help providers in assessing whether their service is in scope and needs to be notified to Ofcom.<sup>4</sup> The guidance also sets out to improve transparency around how Ofcom is likely to interpret the statutory criteria (for instance, in an enforcement investigation). Ofcom considers the impact of this guidance to be minimal, given that providers are required to comply with the requirements as set out in the Act and the guidance does not add to the regulatory burden under the statutory scheme. Government has previously produced [an impact assessment](#) of the Regulations.

## Relationship to the ODPS regime

- 2.14 The level of control that an online provider exercises over video content available on their service (see [paragraphs 3.45-3.57](#)) is a key factor in assessing whether the service falls to be regulated as an on-demand programme service (ODPS) under Part 4A of the Act or a VSP under Part 4B of the Act. Each service will be different and needs to be judged on its own facts, but there may be cases where VSP and ODPS services converge. For instance:
- a) A provider (i.e. the legal entity providing the service) may offer two services – for one service, it controls both the range of audiovisual content available and its organisation within that range (the service is an ODPS), while for the other, it controls the organisation of that content but not its selection (the service is a VSP);
  - b) a VSP may have a ‘dissociable section’ (see [paragraphs 3.24-3.29](#)) that provides videos to members of the public, but that section is an ODPS under Part 4A of the Act; or
  - c) VSPs may carry the same content as an ODPS (for example, where media organisations upload individual videos to a VSP like any other user) or, in specific cases, an ODPS may be hosted on a VSP (where an ODPS provided by a media organisation is offered via a video-sharing platform).
- 2.15 Where relevant, providers are therefore encouraged to refer to the statutory criteria for ODPS under [Part 4A of the Act](#), as amended by the [Audiovisual Media Services Regulations 2020](#). Providers may also find it helpful to refer to Ofcom’s [guidance documents](#) on ODPS notification and rules.

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<sup>4</sup> Non-statutory meaning that Ofcom is not required by legislation to produce guidance around the legal definition of a VSP or the process of notification.

## 3. Video-sharing platform service criteria

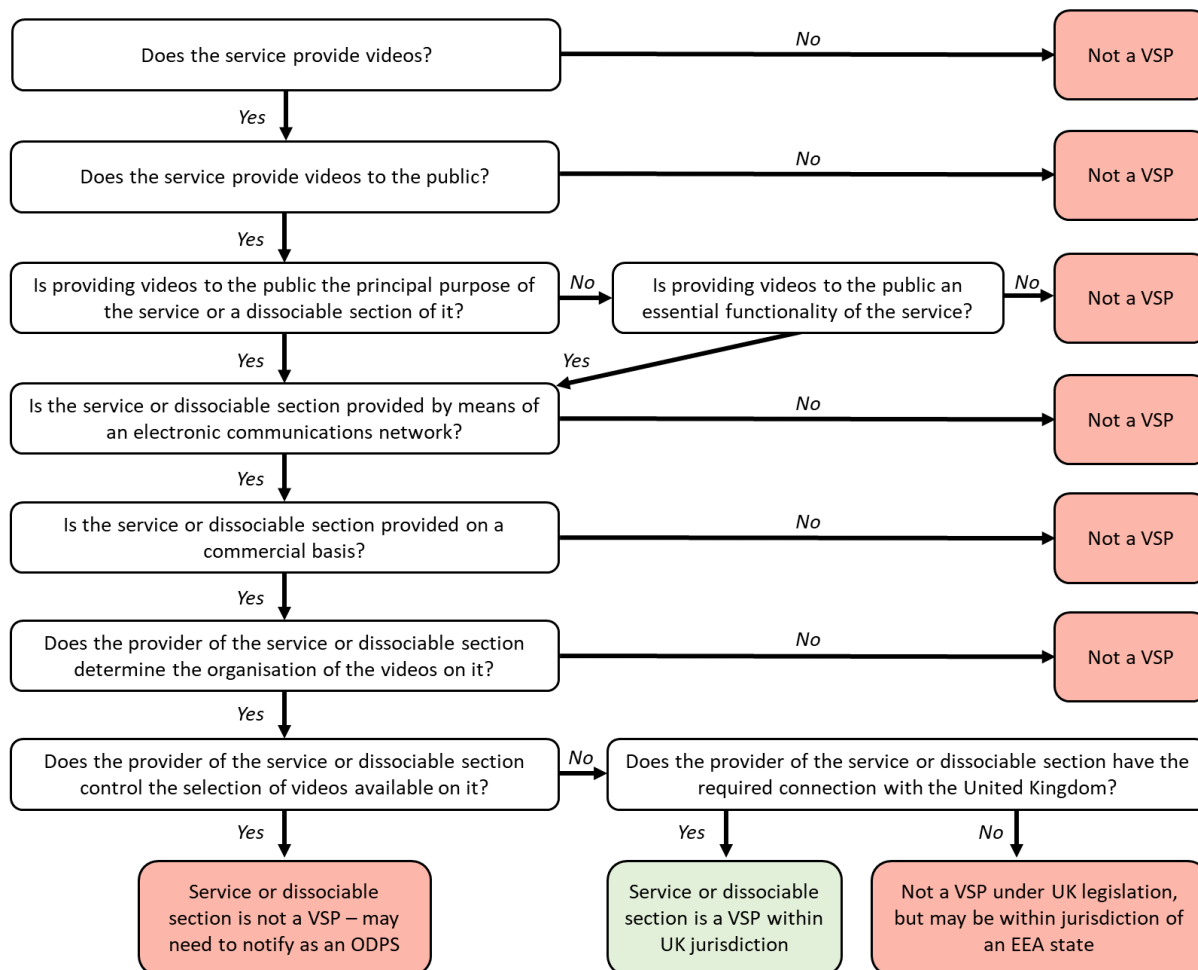
- 3.1 This section of the document provides guidance to assist providers in assessing whether a service, or a dissociable section of a service, meets the following criteria of a VSP under the Act:
- a) **Is providing videos to members of the public the principal purpose of the service or of a dissociable section of the service, or is it an essential functionality of the service?**
    - i) Does the service provide ‘videos’ (see [paragraphs 3.11-3.15](#))?
    - ii) Are the videos provided to ‘members of the public’ (see [paragraphs 3.16-3.21](#))?
    - iii) Is providing videos to members of the public the ‘principal purpose’ of the service or a dissociable section of the service (see [paragraphs 3.22-3.29](#))?
    - iv) Is providing videos to members of the public an ‘essential functionality’ of the service overall (see [paragraphs 3.30-3.38](#))?
  - b) **Is the service or dissociable section provided via an electronic communications network (see [paragraphs 3.39](#))?**
  - c) **Is the service or dissociable section provided on a commercial basis (see [paragraphs 3.40-3.44](#))?**
  - d) **What level of control does the provider of the service or dissociable section have in relation to the videos?**
    - i) Does the provider have general control over what videos are available to users (see [paragraphs 3.45-3.52](#))?
    - ii) Does the provider have general control over the manner in which the videos are organised (see [paragraphs 3.53-3.57](#))?
- 3.2 Section 4 of this document ([Jurisdiction](#)) provides guidance for providers of the service or dissociable section around whether they are within jurisdiction of the UK for the purposes of the Act.
- 3.3 These questions should be considered cumulatively. While many services may be considered to provide video over an electronic communications network on a commercial basis, close consideration should be given to the extent to which this is the ‘principal purpose’ or an ‘essential functionality’, the level of control the provider has over the content on the service, and the provider’s place of establishment.
- 3.4 This guidance is not determinative, and some of the specific elements it sets out below may not be relevant in every case. Any quantitative measures suggested in the guidance are not intended to set ‘thresholds’, nor are they the only relevant indicators determining whether a service meets the legal criteria.
- 3.5 Ofcom recognises that services with different functionalities and focuses may fall under the definition of a VSP in the Act. These may differ according to the way that video content



is delivered to the public – for instance, videos may be livestreamed or pre-recorded and uploaded; users may search for specific video content or it may be served to them through auto-play functionality.

3.6 The wide variety of available content, services and business models makes it unrealistic to provide a simple checklist to determine the services within scope. However, the flow diagram set out below may help service providers consider how they might undertake an assessment of the criteria set out under the Act and navigate through this guidance.

Figure 1: VSP criteria assessment process



Note: the flow-chart is not intended to suggest that application of the essential functionality criterion is restricted to cases where the principal purpose criterion is not met. This flow-chart simply follows the chronological order of the criteria as set out in section 368S of the Act, under which ‘principal purpose’ and ‘essential functionality’ are alternatives.

3.7 The following (non-exhaustive) list gives some examples of the types of service which may meet the definition of a VSP:

- a) A service which hosts videos (as its ‘principal purpose’ or ‘essential functionality’) and allows users to upload videos and engage with other users’ content, supported by advertising or subscriptions;

- b) A non-mainstream service viewable by any member of the public, comprising video content uploaded by users which is of special interest;
- c) A livestreaming service which hosts users' video streams; and
- d) A section of a service, such as a subdomain of an online property or section of an app, which prominently features user-generated video content without editorial control by the host service, and which differs substantively in form and purpose from the rest of the service.

3.8 Services which are unlikely to meet the definition of a VSP include:

- a) A service allowing users to upload and share videos within a business intranet;
- b) An online newspaper, where videos are embedded within the journalistic or editorial content of the service;
- c) TV interfaces which solely provide access to third-party VSP, ODPS and linear services;
- d) Video-conferencing technologies facilitating private video calls between selected participants; and
- e) An 'on-demand' or 'catch-up service' for a broadcast television channel made available from the broadcaster's own branded website (this is likely to be an ODPS service).

### **Is providing videos to members of the public the principal purpose of the service, or of a dissociable section of the service, or is it an essential functionality of the service?**

3.9 Under section 368S(1) of the Act, a service cannot be a video-sharing platform unless its principal purpose, or an essential functionality of it, is providing videos to members of the public. For a dissociable section of a service to be a VSP, it is necessary only to consider whether the principal purpose of the dissociable section is to provide videos to members of the public.

3.10 These criteria can be broken down into several elements as below.

#### **Does the service provide 'videos'?**

3.11 The term "**videos**" is defined in section 368Z13 of the Act as meaning "a set of moving or still images, or of legible text, or of a combination of those things (with or without sounds), which constitutes an individual item irrespective of its length (and which is not an audiovisual commercial communication)".

3.12 From a practical perspective, the definition of 'videos' encompasses a diversity of content,<sup>5</sup> including, for example:

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<sup>5</sup> This includes both user-generated video and programmes, as defined under Article 1 of the [2018 Directive](#) respectively as a "set of moving images with or without sound constituting an individual item, irrespective of its length, that is created by a

- a) videos created and uploaded by individuals (i.e. user-generated videos);
  - b) professional-grade video produced, commissioned and uploaded by established media companies, including broadcast programmes or programmes included in an ODPS where they are made available on a VSP;
  - c) short- and long-form video;
  - d) video which is pre-recorded and uploaded;
  - e) video which is livestreamed;
  - f) video formats which include static imagery; and
  - g) video formats which do not feature sound.
- 3.13 Ofcom recognises that this term encompasses a diverse range of content, with different potential considerations around the appropriateness of protective measures to be taken. For instance, livestreamed video (which is broadcast as it is recorded, in real-time), or ephemeral content (which is viewable only for a time-limited period), can give rise to different moderation challenges to videos which are pre-recorded and uploaded. Appropriate measures should be determined by whether they are practicable and proportionate, taking into account – among other factors – the nature of the video-sharing platform service. Ofcom’s separate guidance on the regulatory requirements will consider these points further.
- 3.14 Some videos like those outlined in paragraph 3.12 may also be available on an ODPS. Therefore, in order to determine what type of service is being provided, a key consideration will be the level of control the provider has over the videos included in the service or dissociable section (see [paragraphs 3.45-3.57](#)), rather than the nature of the video content itself necessarily.
- 3.15 Animated images such as GIFs, in their own right, are not covered within the VSPs framework (except where they are used within a video).<sup>6</sup>

### Are the videos provided to ‘members of the public’?

- 3.16 As a general principle, Ofcom considers that provision to ‘members of the public’ ordinarily refers to content that is openly accessible to the public at large and not limited to particular individuals.
- 3.17 The potential for online services to influence large numbers of people in a similar manner to traditional television and broadcast services is recognised as an important principle in the AVMSD. Indeed, a key driver behind the 2018 revisions to the Directive was the

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user and uploaded to a video-sharing platform by that user or any other user”, and a “set of moving images with or without sound constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider, including feature-length films, video clips, sports events, situation comedies, documentaries, children's programmes and original drama”.

<sup>6</sup> Recital 6 of the [2018 Directive](#)

significance of VSPs as a medium to entertain, educate, share information, influence opinions, and compete with linear and on-demand services for audiences and revenues.

- 3.18 However, online services may reach members of the public in a range of ways which are not directly comparable to the broadcast environment. Given the wide range of functionality and business models of online services, it is not possible to draw clear lines in this area, and the following is intended to provide indicative guidance only.
- 3.19 Assessment in this area will be guided by the particular facts of each case; it will be relevant to look at the number of people who access the content, as well as the capacity for the content or service to be accessed widely.
- 3.20 In line with existing media frameworks and ODPS regulation, the fact that a service or dissociable section may require users to subscribe or register to engage with it, or that it may be subject to access controls or age verification would not, in and of itself, prevent the videos from being available to the public. For example, video content made available to users on a paid-subscription basis (see commercial basis, [paragraphs 3.40-3.44](#)) is likely to be considered to be available to members of the public.
- 3.21 Websites or services made available to a small community of users on a non-commercial basis (see commercial basis, [paragraphs 3.40-3.44](#)) are not intended to fall within scope of the regulation.<sup>7</sup> Similarly, services which are available via closed networks (such as business intranets) would not be considered available to the public at large and would therefore fall out of scope of the regulation.

### **Is providing videos to members of the public the ‘principal purpose’ of the service or a ‘dissociable section’ of the service?**

- 3.22 ‘Principal purpose’ refers to the main activity or objective of the service, or a dissociable section of it (as considered below), and the extent to which the offering is built around video. It is important to consider both the users’ perspective (for instance, how video content is presented to them) as well as the wider market context. Relevant indicators could include:
- a) Whether the service or dissociable section refers to itself as a video-sharing service, and how it markets itself or positions itself against its competitors;
  - b) Whether the service or dissociable section is commonly referred to by others, including for instance users, press or analysts, as a video-sharing service;
  - c) How the content itself is presented or described, including consideration around whether video-sharing is the main draw for users of the service or dissociable section; and
  - d) Whether it provides media, features or services beyond video-sharing; in cases where it does, it may be relevant to consider the centrality of video-sharing to the service or dissociable section, including the proportion and relative prominence of video content

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<sup>7</sup> Recital 6 of the [2018 Directive](#)

on the service or dissociable section – for instance, the prominence given to video on a site’s homepage.

- 3.23 In some cases, it may not be straightforward to determine whether providing videos to members of the public is the ‘principal purpose’ of the service or a dissociable section of the service. In such cases, it may be more relevant to consider whether the provision of videos to members of the public is an essential functionality of the service.

### Dissociable section

- 3.24 A single platform (for example, a website) could be a VSP in its entirety or include one or more dissociable sections which have the principal purpose of providing video to members of the public. Ofcom acknowledges that this assessment may not always be straightforward and will depend on the particular circumstances of each case.
- 3.25 A ‘dissociable section’ might, for instance, include a subdomain of a web property or a distinct part of an app or certain types of user accounts providing access to video. However, technical features or product design alone are not the decisive factor in assessing whether part of a service constitutes a ‘dissociable section’.<sup>8</sup>
- 3.26 When considering whether a section of a service is ‘dissociable’ from the rest, services might consider the extent to which videos within that part are provided for their own value as a standalone feature, rather than as linked or supplementary to other forms of content on the service. Each case will turn on its own facts but, to provide an illustrative example, a standalone section of a newspaper website which is dedicated to hosting user-generated videos on the site might be considered as a dissociable section of that service, if the videos were independent of the written press articles. But, in a scenario where video was embedded in the editorial content, or there were other links between the audiovisual offer and the main activity of providing news in written form, such that the video was merely an indissociable complement to it, these would not be expected to fall within the VSP framework.<sup>9</sup>
- 3.27 Relevant factors in considering whether a section of a service is a dissociable activity in and of itself could include whether the relevant section is distinguished substantively from other parts of the service in terms of its purpose, content and form. Where the information

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<sup>8</sup> See [Summary](#) – Judgement of the Court (Second Chamber), 21 October 2015 (Case C-347/14, New Media Online GmbH v Bundeskommunikationssenat): “When carrying out the analysis, the fact that the audiovisual offer at issue is presented in the principal domain of the website concerned or in a subdomain of that website cannot be the decisive factor”.

<sup>9</sup> In line with DCMS, [Consultation outcome: Audiovisual Media Services, Government response to public consultations on the government’s implementation proposals](#) (24 July 2019): “The government maintains its position that while newspaper websites remain outside the scope of the 2018 Directive and the future online harms framework, standalone parts of newspapers’ websites providing video services which are independent of the journalistic activities in content and form do fall into scope. The use of videos on websites, blogs and news portals which are connected to the journalistic activities falls outside the scope of the new provisions. This change reflects existing case law of the European Court of Justice on the issue, which found that the concept of a programme within the AVMS Directive includes video under the sub-domain of a newspaper website.”

See also Recitals 3 and 6 of the 2018 Directive; and [Judgment](#) of the Court (Second Chamber) of 21 October 2015 (Case C-347/14, New Media Online GmbH v Bundeskommunikationssenat)

is available, relevant quantitative indicators could include the use, amount and reach of video content compared with the rest of the service.

- 3.28 Where one or more dissociable sections of a service are considered to constitute a video-sharing platform service, only those sections will be covered by the regulation.<sup>10</sup>
- 3.29 Where video content appears across a service or platform (including, for example, where the same video appears across multiple features in one service), it may be more relevant to consider whether the service as a whole is a VSP with reference to the criteria in section 368S, including its ‘principal purpose’ (paragraphs 3.22-3.23) or ‘essential functionality’ (paragraph 3.30-3.38).

### **Is providing videos to members of the public an ‘essential functionality’ of the service?**

- 3.30 Assessment of the essential functionality condition in section 368S(1)(b) involves analysis of the service overall, assessing both the commercial and functional value of videos to the service. It is not applicable when considering the dissociable section.
- 3.31 Recital 5 of the 2018 Directive suggests that a service could have the ‘essential functionality’ of providing videos where “the audiovisual content is not merely ancillary to, or does not constitute a minor part of” the activities of that service. It refers specifically to social media sites, noting that “while the aim of [the Directive] is not to regulate social media services as such, a social media service should be covered if the provision of programmes and user-generated videos constitutes an essential functionality of that service”.
- 3.32 As such, the presence of video on a site is not the sole test of ‘essential functionality’ – rather providers should consider the importance of video to the commercial and functional value of their service. At a high level, providers might broadly consider whether the absence of video would, for instance, significantly reduce the amount of content on their service, the service’s utility or function, or its level of use by or attractiveness to users (including the extent to which it is able to attract commercial partners or advertisers).
- 3.33 To provide further context, video might be considered ‘merely ancillary’ to a service when it is provided as an accessory to an underlying activity of the service – for example, user videos on e-commerce platforms which encourage sales by demonstrating the goods or services in use. Video may also be an ancillary accessory to the provision of news in written

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<sup>10</sup> Recital 6 of the [2018 Directive](#)

form.<sup>11</sup> In contrast, where video is provided for standalone value of its own, it is more likely that video will be considered an essential functionality.<sup>12</sup>

- 3.34 Video content could also be considered as a ‘minor part’ of a service where it plays an insignificant role in the service overall. While it is not possible to define clear thresholds here, this may be assessed on a quantitative basis – for example, where a platform service hosts a significant number of videos it might suggest that they are a non-minor part of the service. Quantitative assessments relevant here might not only include the items of video content as compared to other content on a platform, but also the reach or use of that content (e.g. in terms of time spent or users who access the content) or the revenue generated by that content. Whether video is essential could also be assessed on a qualitative basis – for example, where videos contribute to the core functionality or market success of the service, irrespective of quantitative considerations.<sup>13</sup> Other relevant factors could include the amount of investment in video and the prominence given to video content.
- 3.35 Service providers may find it helpful to refer to the [European Commission’s guidelines](#) on the practical application of the essential functionality criterion, which provide an indication of the type of features which could suggest that video is an essential functionality of a service. These guidelines provide helpful context around the meaning of the legal criterion, but are not necessarily definitive in themselves. Nor should a provider consider that a certain number of indicators need to be met (or not met) to determine whether they are providing a VSP service; this should always rely on an assessment of the service as a whole and how essential videos are to it.
- 3.36 In its guidelines, the Commission sets out four main areas which may be assessed to establish whether the provision of video is not merely ancillary or a minor part of a service, and therefore an essential functionality of it. These are:
- a) The relationship between the audiovisual content and the main economic activity or activities of the service;
  - b) The quantitative and qualitative relevance of audiovisual content for the activities of the service;
  - c) Monetisation or revenue generation from the audiovisual content; and
  - d) The availability of tools aimed at enhancing the visibility or attractiveness of the audiovisual content.

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<sup>11</sup> See: Recital 3 of the 2018 Directive (‘A service should be considered to be merely an indissociable complement to the main activity as a result of the links between the audiovisual offer and the main activity such as providing news in written form’), Recital 6 of the 2018 Directive (‘Video clips embedded in the editorial content of electronic versions of newspapers... should not be covered by Directive 2010/13/EU’) and Recital 28 of the 2010 Directive (‘The scope of this Directive should not cover electronic versions of newspapers and magazines’).

<sup>12</sup> Communication from the Commission, [Guidelines on the practice application of the essential functionality criterion of the definition of a ‘video-sharing platform service’ under the Audiovisual Media Services Directive](#) (‘essential functionality guidelines’)

<sup>13</sup> European Commission [essential functionality guidelines](#)

- 3.37 Within each of these areas, there are further indicators (15 in total) which may be referenced in an assessment; these are summarised in [Annex 1](#). In making such an assessment, the Commission recommends that the perspective of users be taken into account, including their exposure to audiovisual content, the prominence given to video content and video-sharing functionality, and how users regard the video content and functionality. Attention should also be given to the nature and role played by videos in the service offered, the positioning of the service on the market and monetisation of the service.
- 3.38 Where relevant to the purpose of determining whether they fall within the scope of section 368S of the Act, Ofcom may request information from service providers, such as the amount, use and reach of video content on their services, under 368Z10 of the Act.

### Is the service provided via an electronic communications network?

- 3.39 Under section 368S(2)(a) of the Act, a service or dissociable section of a service can only meet the definition of a video-sharing platform if it is provided by means of an electronic communications network. This criterion will be interpreted in line with section 32 of the Act,<sup>14</sup> for the most part referring to information shared over the internet, inclusive of mobile and fixed networks. Any service provided over the internet will meet this criterion.

### Is the service or dissociable section provided on a commercial basis?

- 3.40 Under section 368S(2)(b) of the Act, a service or a dissociable section of a service will only be considered a video-sharing platform if it is provided on a commercial basis. In other words, the definition of a video-sharing platform service does not cover non-economic activities or non-commercial communities of interest.<sup>15</sup>
- 3.41 Assessment in this area will need to be undertaken on a case-by-case basis. As a general principle, the capacity to generate revenue through commercial arrangements, rather than actual revenue or profit, will be a key indicator. Businesses that intend to generate revenue or profit, but have not yet achieved the sufficient scale to monetise, may be considered to be offered on a commercial basis.
- 3.42 By way of illustration, the types of features which are likely to indicate that a service or dissociable section is provided on a commercial basis include:

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<sup>14</sup> Under Section 32(1) of the Act, an ‘electronic communications network’ means— “(a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals— (i) apparatus comprised in the system; (ii) apparatus used for the switching or routing of the signals; and (iii) software and stored data; and (iv) (except for the purposes of sections 125 to 127) other resources, including network elements which are not active.”

<sup>15</sup> Recital 6 of the [2018 Directive](#)



- a) Advertising: the inclusion of commercial communications within (e.g. pre- and mid-roll advertising) or around (e.g. banner ads) the video content or wider service.
  - b) Subscription: this includes where platform services make video (including a certain category of content) or platform features (including enhanced features, rewards or memberships) available in return for regular payments.
  - c) Transactions: this includes where video is made available on a pay-per-view basis, or where enhanced features can be purchased. It can also include donations (including creator tips), merchandising or other commercial arrangements; as set out below, platforms can benefit from these arrangements directly (for instance, by taking fees or cuts) or indirectly.
- 3.43 According to the [European Audiovisual Observatory](#), a VSP may be monetised both **directly** and **indirectly**. In the case of advertising, direct monetisation involves placing advertising against the videos, whereas indirect monetisation refers to revenue derived from increased traffic to and engagement with the platform, thereby increasing the value of services in the eyes of advertisers.<sup>16</sup> Where the platform does not derive revenue directly from video content or the VSP service (including where only a ‘dissociable section’ of the service meets VSP criteria), but does from its wider service offering, the service may still be considered to be offered on a commercial basis. This may also be the case where a provider uses information from the VSP service to generate commercial value in other parts of its business (e.g. through monetisation of consumer data).
- 3.44 Service providers may also wish to consult the European Commission’s [essential functionality guidelines](#), particularly category 3 around monetisation or revenue generation, to consider whether their service or dissociable section monetises video. These guidelines also consider ‘direct’ and ‘indirect’ forms of monetisation. As well as advertising and direct payment for the content, platforms may indirectly benefit from tracking users’ activities for commercial or marketing purposes. Payment for content, sponsorship agreements or other commercial contracts between brands and uploaders also indicate that audiovisual content is being monetised; platforms may benefit from such arrangements both directly (where they participate in or facilitate these agreements) and indirectly (by benefiting from the popularity of those creators).<sup>17</sup>

## What level of control does the provider have in relation to the videos?

- 3.45 Under section 368S(2)(c) of the Act, one of the defining criteria of a VSP is that “the person providing [the service or dissociable section] does not have general control over what videos are available on it, but does have general control over the manner in which videos are organised on it”. ‘Organisation’ includes automatic organisation or organisation by way of algorithms, in particular displaying, tagging and sequencing.

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<sup>16</sup> European Audiovisual Observatory, *Online video sharing: offerings, audiences, economic aspects* (2018), p.2, pp.39-41

<sup>17</sup> European Commission [essential functionality guidelines](#)

## Does the provider have general control over what videos are available to users?

- 3.46 Whether the provider has general control over the selection of videos available is a key factor in assessing whether the service or a dissociable section of it is an ODPS or VSP. The description below provides just one element of the definition of an ODPS, so providers are encouraged to refer to the ODPS criteria [Part 4A of the Act](#) if they require further context for assessment in this area.
- 3.47 An ODPS service is defined under the Act by reference to the provider having editorial responsibility for the service. As reflected in section 368A(4) of the Act, editorial responsibility encompasses two elements: general control over what programmes are included in the range offered to users, and general control over the manner in which the programmes are organised in that range. ‘Editorial responsibility’ for the purposes of the Act is determined at the point of the selection of content *and* the organisation of that content.
- 3.48 By contrast, the definition of a VSP reflects the fact that providers typically determine the manner in which videos are organised, but not their selection. Generally, VSP services allow users to upload video content without prior approval or intervention, and to share that content (subject to it being in line with that platform’s terms of use). [The European Audiovisual Observatory](#), for instance, characterises VSPs by open access for all and a lack of platform involvement in the choice of content published, alongside algorithmic or human curation of content.<sup>18</sup>
- 3.49 The ability for users to share content on a platform is a defining feature of a VSP. Article 1 of the 2018 Directive defines a VSP as a service or dissociable section which is “devoted to providing programmes, *user-generated videos*, or both”. In transposing the provisions of the 2018 Directive, the Act has adopted the general term ‘videos’, encompassing the full range of material that may be uploaded by users (from hobbyists to global media networks); nevertheless, section 368S(2)(c) of the Act indicates the reduced level of control that VSP providers have over what videos are available on their service, as a result of the content being provided by users.<sup>19</sup>
- 3.50 A VSP service therefore differs from an ODPS in that the provider does not have general control over what videos are available, and thus the VSP provider is not considered to have ‘editorial responsibility’. Ofcom acknowledges that this assessment may not be straightforward in certain cases, but it may be helpful to consider as a broad principle that VSPs generally allow any third-party (or ‘user’) to share video content (subject to their terms of service or enforcement of their content policies). Assessments will depend on the

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<sup>18</sup> European Audiovisual Observatory, *The legal framework for video-sharing platforms* (2018), p.1: the principal features of VSPs include “the algorithmic or human curation of content; funding through advertising; and ex-post checks on the initiative of rightsholders or the platform itself”.

<sup>19</sup> Ofcom also notes that the VSP Regulations are intended to be superseded by the Online Harms framework, which has an emphasis on ‘companies whose services host user-generated content’. [Online Harms White Paper: Full government response to the consultation](#) (December 2020).

facts of each case, but commercial agreements and deals with content providers may provide some indication of whether a service is making editorial decisions about what videos are included in the range of content available.

- 3.51 Undertaking content moderation will generally not be considered as exercising control over what videos are available for the purposes of the Act. The key determinant will be the role the service plays in actively choosing the selection of videos that is available on the service. While they may make checks on content provided by uploaders, generally VSPs do not play a role in *choosing* the videos that are available. Again, Ofcom recognises that this assessment may not always be straightforward. If, for example, a VSP chooses to ‘screen’ user-generated video for content, in line with its moderation standards, before it is surfaced to other users, this should not meaningfully affect the ‘range’ or ‘catalogue’ of content any more than checking for this content after the video has been surfaced and therefore would not ordinarily constitute exercising control over what videos are available within this framework.
- 3.52 While VSP providers do not have general control over the content available to users, they often do control other components of their service. The following elements will not generally be considered as indicative of general control over what videos are available:
- a) the way in which they are organised, presented or given prominence (see paragraphs 3.43-3.57 below);
  - b) the platform interface;
  - c) the design, branding, look and feel of the service;
  - d) means of user engagement, such as comments;
  - e) the technical arrangements underlying the service;
  - f) protection mechanisms, content policies and complaints mechanisms; and
  - g) certain accessibility features such as subtitling of content.

### **Does the provider have general control over the manner in which the videos are organised?**

- 3.53 While VSP providers do not have general control over what videos are available on their service, they are able to control the ways in which these videos are made available to users.
- 3.54 Under section 368S(2)(c)(ii) of the Act, the organisation of content includes automatic organisation or organisation by way of algorithms, in particular by displaying, tagging and sequencing. ‘Displaying’ refers to how videos appear and are made available to the user (which may include promotion or recommendation of content). Tagging relates to the sorting and categorisation of the videos and may be done automatically or by humans (or both), including employees and/or users. Sequencing determines the order in which content appears. These are not exhaustive examples, and each may be used simultaneously or in combination with other organisational tools.

- 3.55 VSPs do not need to have exclusive control over the organisation of content but are likely to have decisive control over its organisation. For instance, many platform services rely on both explicit (e.g. sharing, liking content) and implicit (e.g. time spent watching) inputs from users to organise video content, but ultimately the provider determines if, when and how this affects the organisation of content.<sup>20</sup>
- 3.56 Content organisation may be generic or personalised, or both.<sup>21</sup> In the case of generic organisation, the way in which videos are presented is the same for all users. This may be based, for instance, on the time of posting or by genre, which can be determined according to tags labelled by the platform, creators or users. Many online platform services also adopt personalised systems of delivery, where the content presented to a user is based on factors known about that user, such as their previous use of the service or their geographical location. Further, the way in which providers organise, curate and offer content can be subject to continuous change.
- 3.57 The organisation of content on VSPs can be automated, but need not be.<sup>22</sup> Assessment in this area will be guided by the particular facts of each case. Rather than the approach that is employed to organise the content, establishing that a service or a dissociable section of it meets the definition of a VSP, as opposed to an ODPS, will depend on establishing that the provider of the service does not play an active role in controlling what videos are available on the service or dissociable section.

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<sup>20</sup> M.Z. van Drunen, *Journal of Media Law*, [The post-editorial control era: how EU media law matches platforms' organisational control with cooperative responsibility](#) (July 2020)

<sup>21</sup> Ofcom, [Online Nation](#) (2020), p.124

<sup>22</sup> European Audiovisual Observatory, [The legal framework for video-sharing platforms](#) (2018), p.1: among the principal features of VSPs is “the algorithmic or human curation of content”.

## 4. Jurisdiction

- 4.1 Under 368S of the Act, as amended by the [Audiovisual Media Services \(Amendment\) \(EU Exit\) regulations 2020](#), a VSP provider will be within UK jurisdiction if it has the required connection with the United Kingdom, as specified in either the ‘case A’ criteria or, if this isn’t applicable, the ‘case B’ criteria of the Act.<sup>23</sup>

### Is the VSP provider within the jurisdiction of the UK under the case A criteria?

- 4.2 Under the case A criteria (section 368S (4) and (6) of the Act), providers must consider whether they are providing the service, or the dissociable section of the service, using a fixed establishment in the UK for an indefinite period, and effectively pursuing an economic activity in doing so.
- 4.3 Relevant factors in considering whether a provider is within UK jurisdiction for this purpose may include:
- a) whether the provider is registered in the UK; or
  - b) whether the provider has stable arrangements in the UK for the exercise of an economic activity relating to the provision of the service or the dissociable section of the service, including the presence of a UK subsidiary or, in some circumstances, the operation of an office in the UK or the presence of employees or agents of the company in the UK; and
  - c) the nature of the economic activity carried out in the UK and how it relates to the overall service being provided.
- 4.4 This list of factors is indicative and other factors may be relevant in determining whether a provider is established within UK jurisdiction. Neither the location of the technical means used to provide the service (such as where the technology supporting a website is located), or where the service is accessible will determine establishment in themselves.
- 4.5 As set out in section 368S(6) of the Act, in cases where a VSP provider is established both in the UK and an EEA state,<sup>24</sup> in the sense of effectively pursuing an economic activity through fixed establishments in both locations, it will be necessary to consider in which of the two locations the centre of the provider’s activities relating to the service, or the dissociable section of the service, is. Relevant factors here may include, without being limited to, the following:

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<sup>23</sup> The provider of the relevant VSP service will ordinarily be the entity named in the relevant terms and conditions as the provider of the relevant service, or dissociable section of a service. The country where the provider is incorporated will not necessarily be the same as the place where that provider is established, or deemed to be established, pursuant to the Act in relation to the VSP service in question.

<sup>24</sup> Following incorporation of the AVMSD into the EEA Agreement, the VSP regime will apply to EEA countries as well as EU member states. We understand this process to be ongoing. While we refer to EEA states for simplicity in this guidance, see the [EFTA AVMSD status update](#) for the current status of this process.

- a) where the provider’s central administration or head office is located;
  - b) where management and commercial decisions about the relevant service, or the dissociable section of the service, are taken;
  - c) the location of the workforce relevant to the service, or the dissociable section of the service, and where that workforce is established across different countries, the nature of the functions carried out in each country; and/or
  - d) where the main functions concerning the provision of the service, or the dissociable section of the service, (such as any functions in relation to the organisation of content and advertising) are carried out.
- 4.6 Ofcom recognises that there may be instances where the entity that provides the VSP service in the UK is different to the entity that provides the service in the EEA. In these instances, providers would need to assess whether the entity providing the UK service is established in the UK pursuant to the case A criteria. In addition to the factors set out above, providers may need to consider, as part of that assessment, the extent to which any UK service differs from the corresponding EEA service or where the relevant functions for the UK service are carried out.

## Is the VSP provider within the jurisdiction of the UK under the case B criteria?

- 4.7 Under the case B criteria (see section 368S (5), (6) and (7) of the Act), the provider of a service or a dissociable section of a service may still be within UK jurisdiction, where:
- a) It has a group undertaking established in the UK;<sup>25</sup> and
  - b) It does not fall under the jurisdiction of an EEA state for the purposes of the AVMSD.
- 4.8 A provider does not fall under the jurisdiction of an EEA member state for these purposes where:
- a) it is not established there in accordance to Article 28a(1) of the AVMSD (by reason of pursuing an effective economic activity through a fixed establishment in the EEA); and
  - b) it is not deemed to be established in the territory of any EEA state in accordance to Article 28a(2) to (4) of the AVMSD (through a parent, subsidiary or group undertaking in an EEA member state).

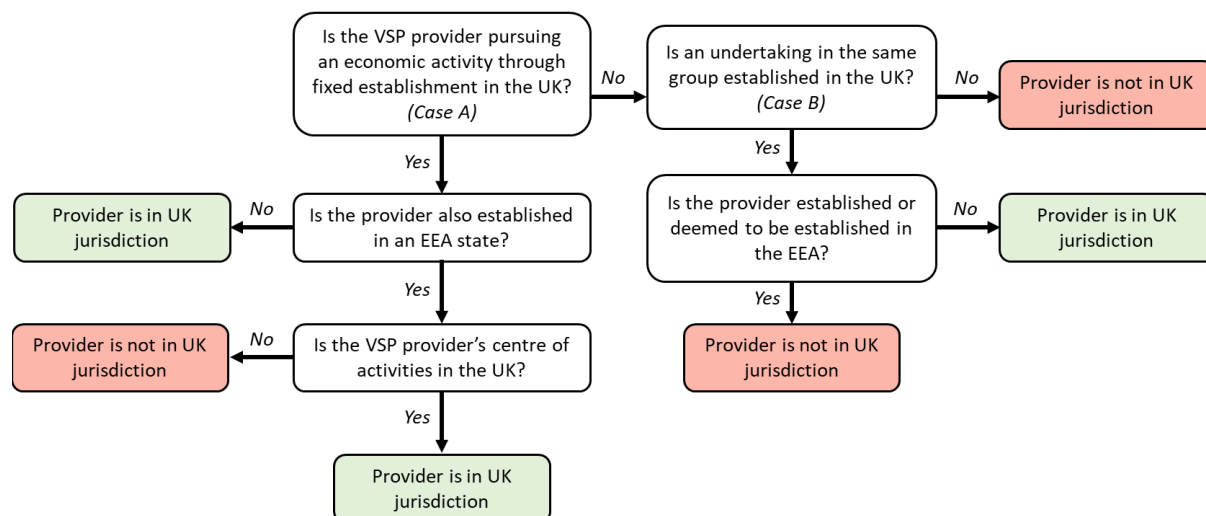
## Application of the case A and case B criteria

- 4.9 The flow diagram below may help service providers consider how they might undertake an assessment of the case A and case B criteria set out in the Act.

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<sup>25</sup> The term group undertaking has the meaning given to it in section 1161 of the Companies Act 2006(5), except that it also includes all other undertakings having economic and legal organisational links to a VSP provider.

Figure 2: jurisdiction assessment process based on post-transition criteria



4.10 While assessments will be determined by the facts of each case, the following examples illustrate how these jurisdictional criteria may apply in practice:

- a) If a VSP provider has establishment in the UK and no other country, it will be within UK jurisdiction.
- b) If a VSP provider is effectively pursuing an economic activity through fixed establishment in both the UK and an EEA state, and its main centre of activities as regards the VSP service is the UK, it will be within UK jurisdiction. The relevant VSP provider may also fall within the jurisdiction of the relevant EEA state as a consequence of the UK’s departure from the EU.
- c) Vice versa, if a VSP provider is effectively pursuing an economic activity through fixed establishment in both the UK and an EEA state, and its main centre of activities as regards the VSP service is the EEA state, it will be within jurisdiction of the EEA state.
- d) If the VSP provider is established in a non-EEA country and its only connection to the UK is through a group undertaking incorporated in the UK, but it has no corporate presence of any kind (including through a group undertaking) in an EEA state, it will be within UK jurisdiction under the case B criteria.
- e) If a VSP provider is established in an EEA state, and its only connection to the UK is through a group undertaking incorporated in the UK, jurisdiction will fall to the EEA state under Article 28a(1) of the AVMSD and the case B criteria will not apply.

## How will Ofcom consider these criteria?

4.11 Ofcom would be likely to consider some or all the above factors, as appropriate, together with any other factor that may be relevant in the circumstances, in order to determine whether it has jurisdiction in relation to a particular VSP provider.

**Guidance notes: Video-sharing platforms – who needs to notify to Ofcom?**

- 4.12 Under 368Z10 of the Act, Ofcom has a power to require a person who appears to be a VSP service provider to provide information for the purpose of carrying out our functions in relation to VSPs, including determining whether they fall under within UK jurisdiction.
- 4.13 We note that the Government has laid [a statutory instrument](#), amending section 368Z12 of the Act, to provide that Ofcom may co-operate with national regulatory authorities (NRAs) in the EEA, for the purposes of facilitating the carrying out of our functions under Part 4B of the Act, or the carrying out by the other national regulatory authorities of their functions under the AVMSD in relation to VSPs.
- 4.14 Circumstances in which Ofcom may consider it appropriate to co-operate with NRAs in EEA states may include jurisdictional matters, such as determining where a provider's centre of activities as regards the relevant VSP service is; co-ordinating action, where possible, in cases where the same VSP provider falls under the jurisdiction of both the UK and an EEA state; and broader engagement with NRAs in EEA member states to ensure cross-border compliance and the exchange of best practices.



## 5. Notification requirements

### When do providers need to notify?

- 5.1 The obligation in section 368V of the Act to notify will come into force on 6 April 2021 and existing UK-based VSP providers will have until 6 May 2021 to notify their service to Ofcom (we refer to this period as “the notification window”).
- 5.2 In all other cases, providers are required to make an advance notification to Ofcom of their intention to provide a service. In these instances, notification should be made to Ofcom at least ten working days before launch of the service.
- 5.3 In cases where providers operate both an ODPS service and a VSP service, or several VSP services, each of these services must be notified separately.
- 5.4 In certain circumstances, under section 368V(2) of the Act, providers must notify Ofcom about a service they have notified and are already providing. In such cases, the notification must be made before:
- a) providing the service with any significant differences; or
  - b) ceasing to provide the service.
- 5.5 “Significant differences” here include any change that may affect the determination of jurisdiction (see [section 4](#) of this document). Other changes which Ofcom is likely to consider would lead to a significant difference to the notified service include:
- a) a fundamental change in the nature of the service, including, but not limited to, changes which may affect the determination of the service as a ‘VSP’ (e.g. if the service takes editorial control of the content available on it) and would mean that the service ceases to be notifiable as a VSP service under section 368V;<sup>26</sup> and
  - b) a change in the service’s approach to how it meets the obligations set out in part 4B of the Act, which may fundamentally alter the character and nature of the service.
- 5.6 VSP providers will also need to notify Ofcom of changes to details provided in the original notification, such as contact information.

### What does notification involve?

- 5.7 Notification forms will need to be submitted via a dedicated web portal on Ofcom’s website, which will be available to use from 6 April. The information in the notification form is outlined in [Annex 2](#).
- 5.8 Providers may email Ofcom at [VSPRegulation@ofcom.org.uk](mailto:VSPRegulation@ofcom.org.uk) if they have any questions about the notification and scope requirements. However, Ofcom is unable to provide legal

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<sup>26</sup> If the change results in it becoming an ODPS, it may instead be notifiable under section 368BA of the Act.

advice and it remains the responsibility of each provider to satisfy the relevant legal obligations around notification.

- 5.9 Under section 368U of the Act, Ofcom will maintain and publish an up-to-date list of notified VSP providers in the UK. When a service has been notified, the name of the provider, the service and public contact details for the provider will be published on the Ofcom website using the details supplied in the notification form.<sup>27</sup>
- 5.10 Services will be able to update their contact or service details within the web portal. In circumstances under paragraphs 5.4 and 5.5 of this guidance, where a VSP is subject to significant differences or ceases provision of the service, providers should notify Ofcom of this via the portal.

## What if a service is not notified to Ofcom?

- 5.11 Where a person appears to be providing a VSP service from the UK, we will check whether the service has been notified to us. If not, we will make an informal assessment of whether the service meets the definition of a VSP. We will inform service providers about our assessment and the legal implications of being considered as a video-sharing platform provider.
- 5.12 Ofcom will carry out an overall analysis of the service, taking into account the criteria in the Act and the guidance above, and work on a case-by-case basis which takes account of the specific functionality of the service.
- 5.13 Under section 368Z10 of the Act, Ofcom has the power to require service providers and other third parties to provide information which will help determine whether the service is a VSP within UK jurisdiction.
- 5.14 Under section 368W of the Act, Ofcom has the power to take enforcement action where we consider that a provider of a video-sharing platform service has failed to notify, including imposing financial penalties (as appropriate).
- 5.15 Ofcom will ensure procedures for dealing with cases and decisions are fair and transparent, including the opportunity to make representations before Ofcom reaches any final decision on scope and jurisdiction. We intend to apply our [Enforcement guidelines for regulatory investigations](#) and we will be reviewing these in the context of the VSP framework. We will consult stakeholders if we identify any changes that may be needed.

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<sup>27</sup> This is not a substitute for VSP service providers' obligation under section 368Y(2) of the Act to publish their name, address and electronic address, though they may choose to provide the same details here.

## A1. Essential functionality guidelines summary

- A1.1 In July 2020, the European Commission issued [guidelines](#) on the practical application of the essential functionality criterion of the definition of a ‘video-sharing platform service’ under the 2018 Directive. The guidelines set out the factors and service elements that national regulatory authorities (NRAs) may consider as indicators that a service has the ‘essential functionality’ of providing video to the public. The guidelines are useful for both NRAs and services which may fall within scope of the AVMSD.
- A1.2 Assessments of essential functionality are to be made on a case-by-case basis, with authorities making service providers aware of ongoing assessments and, where desirable, in cooperation with regulatory counterparts in other states. Ofcom will have reference to these indicators in its own assessments. The Commission sets out that the criteria should not be applied cumulatively, so the absence of one or more criteria will not lead to the automatic conclusion that a service is not a VSP.
- A1.3 The indicators have been summarised below, and the relevant examples are split out and supplemented by Ofcom. Examples in normal text are positive (indicating that video is more likely to be an essential functionality), while those in italic text are negative (likely to indicate that video is a minor or ancillary part of the service).

## 1) The relationship between the audiovisual content and the main economic activity or activities of the service

Indicator	Relevant examples
<p><b>1 Overall architecture and external layout of the platform</b></p> <p>Where video is not merely ancillary or minor, it is likely to feature video-sharing features prominently in its layout, including its main pages, sharing interface or timeline.</p>	<ul style="list-style-type: none"> <li>• Features presenting new/popular videos/live broadcasting</li> <li>• Video category lists</li> <li>• ‘Take a Video’ button</li> <li>• Direct link to phone or computer gallery feature</li> </ul>
<p><b>2 Standalone nature of audiovisual content</b></p> <p>Where video is uploaded, shared, watched or downloaded by users by virtue of its intrinsic informational, entertainment or educational value, it is less likely to be merely ancillary or minor.</p>	<ul style="list-style-type: none"> <li>• <i>E-commerce platform allows vendors to share videos solely to illustrate products</i></li> </ul>
<p><b>3 Specific functionalities tailored for, or specific to, audiovisual content</b></p> <p>Specific features to attract users to videos or to increase users’ engagement with videos may indicate that it is not an ancillary or minor feature of the service.</p>	<ul style="list-style-type: none"> <li>• Auto-play functionality</li> <li>• Livestreaming functionality</li> <li>• Video-only search</li> <li>• Video-only filtered search results</li> </ul>
<p><b>4 The way the service positions itself on the market and the market segment it addresses</b></p> <p>This refers to the way in which the service self-identifies in its communication to the public, including users and advertisers, as well as the market segment it addresses. It will include reference to the way that the service is branded to the public or the way it markets or advertises its services to users.</p>	<ul style="list-style-type: none"> <li>• The company refers to itself as a VSP</li> <li>• The company emphasises its audiovisual component/ offer</li> </ul>

## 2) The quantitative and qualitative relevance of audiovisual content for the activities of the service

Indicator	Relevant examples
<p><b>5 The amount of audiovisual content available on the platform</b></p> <p>If the platform includes a significant amount of video, it is more likely it that the audiovisual functionality is essential. If meaningful data is available, national regulatory authorities (NRAs) can assess this in quantitative terms, e.g. by considering the number of videos present on the platform, or proportion of videos compared to other types of content. In the absence of precise data, NRAs may also use qualitative assessments such as user surveys and sample analysis.</p>	<ul style="list-style-type: none"><li>• High amounts of video of content on the platform</li><li>• Third-party data indicates a high level of video consumption by users</li></ul>
<p><b>6 The use of audiovisual content on the platform</b></p> <p>Users making substantial use of videos on a platform could be an indication of videos’ relevance to the service and of essential functionality. Quantitative data in this area might include the number of views, clicks, shares and likes relating to videos. Where possible, this may be compared with use of other types of content within the platform.</p>	<ul style="list-style-type: none"><li>• User surveys indicate that users place value on sharing video</li></ul>
<p><b>7 Reach of the audiovisual content</b></p> <p>Even if limited in number, popular videos can reach large numbers of users, for instance, via sharing and recommendations. The presence of popular video content aiming to inform, educate or entertain likely indicates that such content is non-minor. The target audience of the platform will be relevant here; particularly if a platform targets minors, or is regularly used by minors with no measures to discourage this.</p>	<ul style="list-style-type: none"><li>• User surveys indicate access by a large proportion of children</li></ul>

### 3) The monetisation or revenue generation from the audiovisual content

Indicator	Relevant examples
<p><b>8 Inclusion of commercial communications in or around audiovisual content</b> This includes commercial communications controlled both by the service and advertising space sold to third parties. Advertising policies around appropriate content may also be a relevant element to consider.</p>	<ul style="list-style-type: none"><li>• Presence of pre-, mid- or post-roll ads</li></ul>
<p><b>9 Making access to audiovisual content subject to payment</b> If the platform makes access to audiovisual content subject to payment, it is more likely to be considered an essential functionality of the service. Monetisation systems may be managed directly by the platforms, or by uploaders and creators.</p>	<ul style="list-style-type: none"><li>• Subscription or pay-per-view access</li></ul>
<p><b>10 Sponsorship agreements between brands and uploaders</b> Monetisation of content is also indicated by sponsorship or product placement agreements between third party brands of products/services and uploaders. As services may benefit from the popularity of those creators, this is considered an indicator monetisation even if the platform does not participate directly in the agreements.</p>	
<p><b>11 Tracking of users' platform activities</b> Tracking users' interaction with audiovisual content for marketing and commercial purposes may also be considered as a means of indirect monetisation.</p>	<ul style="list-style-type: none"><li>• Targeted behavioural advertising</li><li>• Data-sharing agreements</li></ul>

#### 4) The availability of tools to enhance the visibility or attractiveness of the audiovisual content

Indicator	Relevant examples
<p><b>12 Specific features or actions prompting the consumption of audiovisual content</b></p> <p>User interfaces that prompt or encourage the consumption of audiovisual content suggest that the content is relevant to both users and platforms and is therefore not minor or ancillary.</p>	<ul style="list-style-type: none"> <li>• Videos are suggested or shown on the main page</li> <li>• Videos are suggested without any specific request by the user</li> <li>• Video content is prioritised or promoted in user searches</li> </ul>
<p><b>13 Tools within or around videos that are designed to attract users and encourage their interaction</b></p> <p>These tools or systems indicate a service’s aim to facilitate, improve or boost users’ experience of audiovisual content on the platform and encourage their engagement with videos, therefore indicating video’s relevance to the service. This indicator also includes any development or investment by services in innovative, immersive and interactive ways of sharing and consuming audiovisual content.</p>	<ul style="list-style-type: none"> <li>• Sharing options</li> <li>• Live chats specifically linked to audiovisual content</li> <li>• ‘Watch parties’</li> <li>• Support for applications e.g. on smart TVs</li> </ul>
<p><b>14 Tools or systems allowing users to select the audiovisual content they wish to be offered</b></p> <p>Certain services allow users to personalise their own audiovisual offer by selecting what they are interested in, or opting out from certain types of video content. By helping retain users’ attention, these can indicate video’s relevance to the service.</p>	<ul style="list-style-type: none"> <li>• Interests and preferences associated with an account.</li> <li>• User questionnaires.</li> </ul>
<p><b>15 Tools or systems to track the performance and manage content uploaded on the platform</b></p> <p>Services can also enhance the attractiveness of video content by offering uploaders tools or systems to track and manage the performance of their content. This is also an indication of video’s relevance to the service.</p>	

## A2. Notification information

- A2.1 The obligation in section 368V of the Act to notify will come into force on 6 April 2021. Existing UK-based VSP providers will have until 6 May 2021 to notify their service to Ofcom. In all other cases, providers are required to make an advance notification to Ofcom of their intention to provide a service, at least ten working days before its launch.
- A2.2 VSP providers will be able to access a webform to notify Ofcom of their service. Information provided at notification which will be made available to the public through Ofcom’s website within the list of UK VSP providers is marked as **[PUBLIC]**. The information in the notification webform includes:
- a) clear indication of the service in question, including its name **[PUBLIC]** and in the case of a dissociable section its relation to the service as a whole;
  - b) the UK launch date of the service;
  - c) provider details – the service providers’ name **[PUBLIC]**, address and, where applicable, company number. In most cases this information will relate to a limited company, although it could be another type of organisation, or an individual;
  - d) a notification contact – the person to whom Ofcom should address inquiries about the notification, and the day-to-day contact for Ofcom on regulatory matters;
  - e) a compliance contact – the person to whom Ofcom should contact regarding any compliance issues (which may be the same as one of the other contacts if appropriate);
  - f) **[PUBLIC]** a public contact – these are the details that will be published on the Ofcom website. This may be a personal contact (where such a person consents to having these details published) or contact details for the provider, service or a department;
  - g) authorised person contact – as in paragraph A2.3 below, this person will need to give a declaration that the information in the form has been authorised by them;
  - h) brief descriptions of the nature of the service, including how it meets the criteria set out in the Act, how it is funded and information on how the service is made available – for instance the websites, apps or third-party platforms (e.g. smart TV menus) it is available through;
  - i) information relating to how the service is within UK jurisdiction; and
  - j) confidentiality requests – if a VSP service provider indicates to us that part or all of a notification form is confidential, we will carefully consider the request. Sometimes we will need to publish such notifications, including those that are marked as confidential, in order to meet legal obligations (for example, under the Freedom of Information Act 2000).



**Guidance notes: Video-sharing platforms – who needs to notify to Ofcom?**

- A2.3 You must fill in all sections of the notification webform. A declaration that the information has been authorised (e.g. by a company secretary, a partner or member of the governing body) will also need to be made.
- A2.4 After a service has been notified, Ofcom will engage with the provider to obtain relevant information about the service. This may include information about the service to inform the setting of regulatory fees. Ofcom is not permitted under the Act to charge fees from VSP service providers until April 2022.
- A2.5 Ofcom is a Data Controller under the Data Protection Act 2018 and is committed to protecting and processing any personal information shared with us in a manner which meets the requirements of the Data Protection Act 2018. Please see Ofcom's [General Privacy Statement](#) for information about how Ofcom handles your personal information and your corresponding rights.