

## Your response

Question	Your response
<p><b>Question 1: Do you have any comments on proposed guidance around subsection 1 of section 368S of the Act – whether the provision of videos to members of the public is the principal purpose of the service or a dissociable section of the service, or an essential functionality of the service?</b></p>	<p>The criteria are comprehensive. OfCom should be aware that there will be a strong incentive for websites to make superficial changes in order to evade regulation, so criteria may also include analysis of the historic form and functionality of a service.</p>
<p><b>Question 2: Do you have any comments on proposed guidance around subsections 2(a)-(c) of section 368S of the Act – provision via an electronic communications network; provision on a commercial basis; and the level of control providers have over videos?</b></p>	<p>The criteria are comprehensive. OfCom should be aware that there will be a strong incentive for websites to make superficial changes in order to evade regulation, so criteria may also include analysis of the historic form and functionality of a service.</p> <p>A case in point is the recent response by MindGeek to Visa/Mastercard withdrawing payment services. The company swiftly limited who could upload content to their sites to studios and members of their models program. When applied to this sort of response, would OfCom’s proposals deliver the policy goals behind the Directive?</p>
<p><b>Question 3: Do you have any comments on proposed guidance around assessing whether a service is within jurisdiction of the UK?</b></p>	<p>As recent enforcement activity by the European Commission evidences, most Member States did not implement the Directive on time, and many are months or years behind the UK.</p> <p>When applying the Act as amended by the Regulations, Section 386S subsection 5 “P is not under the jurisdiction of an EEA State for the purposes of the Audio Visual Media Services Directive”, OfCom should not consider a service to fall under the jurisdiction of an EEA State if that state has not yet commenced the required legislation to incorporate the Directive into their domestic law. This will prevent services being afforded safe-harbour for an extended period of time in an EEA state which delays transposition. A service is clearly not</p>

	<p>under the jurisdiction of the courts of an EEA state if that state has no law in place to apply the Directive, and no imminent intention of making such a law.</p>
<p><b>Question 4: Do you have any comments on proposed guidance around notification of a service, including the detail provided in Annex 2?</b></p>	<p>OfCom may wish to seek information on the beneficial ownership of the service, rather than confining itself to the specific legal entity operating it.</p>
<p><b>Question 5: Do you have any comments on any other part of the guidance which is not explicitly set out in questions 1-4?</b></p>	