



COMMENTS OF THE WALT DISNEY COMPANY
ON THE
DIGITAL MARKETS, COMPETITION AND CONSUMERS BILL
Submitted on Monday 12 July 2023

Introduction:

The Walt Disney Company appreciates the opportunity to provide comments on the Draft Digital Markets, Competition and Consumers Bill (Draft Bill). Disney shares Government's commitment to offering consumers information regarding the terms of service, including the reasonable ability to cancel and withdrawal from the service, consistent with the nature of the offering, in particular Subscription Video on Demand services (SVODs). It is also important to note that our SVOD offering provides consumers the ability to choose either a monthly or annual subscription with the latter benefitting from a discounted fee. Any regulation should not disincentivise business from offering consumers such choices so that they can choose the best option according to their consumption patterns and financial considerations.

General Comments:

It is our experience that consumers prefer that communications from companies are tailored, respectful of the choices they exercise and targeted to meet their needs consistent with the nature of the service being offered. We are concerned that the Draft Bill adopts a one-size-fits all approach that prevents companies from meeting these consumer preferences. In many circumstances the Draft Bill imposes obligations that fail to recognise varying business models and commercial incentives. It therefore imposes obligations that we believe go far beyond consumer expectations as related to Disney+.

Accordingly, we believe that the Draft Bill adopts overly burdensome obligations on services that are already driven by market imperatives and incentives to ensure consumer satisfaction, including frequent use. SVODs are a perfect example of these imperatives and incentives. Given the competitive nature of the marketplace, we strive to continually offer new compelling content to ensure that subscribers obtain ongoing value from their Disney+ subscription. Unlike some other service sectors, we endeavour to ensure consistent engagement from our subscribers. We therefore continually improve our service offering with new compelling content. A failure to do so will result in dissatisfaction and likely churn, which is a well-documented reality in our sector given the numerous competitive offerings for consumer attention, which go well beyond just SVOD services and include, linear TV, gaming, user-generated content services, etc.

We therefore recommend that Parliament and Government consider revisiting the one size fits all approach to the Draft Bill. We support establishing essential consumer protections that apply uniformly across all service sectors but specific implementation strategies should take into account consumer expectations and the characteristics of the service in order to avoid unnecessary and overly burdensome obligations that do not serve consumers. Indeed, overly burdensome obligations can lead consumers to disengage thereby undercutting the very purpose of the protections proposed. Higher obligations can be imposed on the sub-set of services for which there is a well-defined and evidenced consumer detriment based on existing practices and any specific implementation mandates should reflect the nature of the service being offered.

We address particular areas of concern based on the above below.

Pre-Contractual Information:

As mentioned, Disney is committed to offering consumers the information they need to make informed decisions regarding their impending subscription and the best offering according to their personal preferences. We are equally committed to meeting consumer expectations regarding ease of sign up for services. The reality is that consumers want to sign up for services directly from devices with small screens. This presents specific challenges in providing significant amounts of information beyond the key contractual terms necessary for the consumer to exercise an informed decision. Our current practice, described below, provides consumers the full set of information they need to make such an informed decision. We believe that the pre-contractual information mandated pursuant to Clause 248 and Schedule 20 of the Draft Bill exceeds the constraints of mobile interfaces and runs the risk of preventing consumers from subscribing and possibly accessing services on the device of their choosing.

Immediately above the AGREE & SUBSCRIBE BUTTON, Disney+ informs subscribers of the following:

1. The date on which the subscription becomes effective – immediately for this service;
2. The terms for withdrawing from the agreement within 14 days;
3. The fee will be charged on a recurring basis either monthly or annually depending on the temporal term chosen by the subscriber,
4. The cancellation policy; and
5. The refund policy.

This section also provides links to the Subscriber Agreement and Privacy Policy, both of which provide more detailed information regarding our terms, policies and practices and by agreeing to subscribe the consumer acknowledges that they have read both.

With the above in mind, we recommend the following changes to the Draft Bill:

1. Reduce the information that must appear on a screen prior to concluding the agreement to that which is absolutely necessary for the subscriber to make an informed choice so as to recognize interface constraints while still meeting consumer interest in using small mobile devices to procure new services. We believe the information that we provide immediately above the button to conclude the agreement meets this test; and
2. Allow for additional relevant information to be provided via a link to a Subscriber Agreement and other relevant policies.

Renewal Notices:

As mentioned above, SVODs are driven by market imperatives to adopt practices that incentivise subscribers to visit and utilise the service frequently. Consumer stickiness within what is commonly referred to as the attention economy is the best means of retaining customers given the vast choices consumers have to inform and entertain themselves. To this end, we regularly refresh our library of content with new and compelling programming to ensure consumer satisfaction.

Moreover, we know through targeted engagement with our consumers, that they prefer limited communications. Sending unwanted or unnecessary communications leads them to ignore messages, even those that provide important subscription information. This is why we provide clear information to our subscribers regarding the recurring charge immediately above the button to conclude their subscription, and make unsubscribing easy to execute. We allow annual subscribers to terminate their subscription at any time during their subscription with the effective date being the end of the current annual payment. The end date reflects the fact that the consumer has received the benefit of a discounted fee compared to monthly subscribers. Monthly subscribers can terminate their subscription at the end of the current monthly billing period.

The combination of the market imperatives, consumer preferences, our practice of providing timely and clear notice of the recurring fee and the ease of terminating the agreement should obviate the need for mandated renewal notices. At a minimum, it obviates the need for the micro-managing of how and when these notices should be sent, which is a serious flaw in the Draft Bill that fails to recognise that it could lead to consumer's ignoring notices, as well as the impact it may have on technical operations, infrastructure capabilities and territorial reach of services, etc.

We therefore recommend that any mandated renewal notice obligation should be limited to those sectors that have a well-documented practice of attempting to trap their consumers, something that obviously does not apply to SVODs. At a minimum, the Draft Bill should delete the overly prescriptive procedures for offering mandated renewal notices.

Cancellation:

Disney+ offers consumers a clear and easy to use cancellation process that comports with the principle that it is as easy to cancel as it is to subscribe. In fact, it is easier to cancel a Disney+ subscription compared to subscribing. We therefore have no issue with this requirement, however we do seek clarity on what single-step cancellation means. However, the Draft Bill mandates that a subscriber can terminate a subscription by any means, including by writing to an operator's business address. Given our commitment to consumer satisfaction it is imperative that we can ensure a prompt response to requests to cancel. A written request that is not tracked may never reach our business address or may be delayed in reaching the right department depending on the address the subscriber uses. Moreover, a subscriber can only initiate a Disney+ subscription online. Therefore, it is reasonable that the consumer cancels the subscription by the same means. We recommend that the legislation be amended to grant consumers the right to cancel a subscription by reasonable means, clarifying that "reasonable means" is met when a subscriber can cancel by the same means as the subscriber subscribes.

Withdrawal:

The Draft Bill imposes an obligation to allow subscribers to withdrawal from an agreement within 14 days after its conclusion. As outlined above, we offer subscribers this benefit on the condition that they have not begun to watch content. This condition is important given the nature of SVOD services, which offer a large library of content that allows consumers to choose when and how to watch it. A blanket right to withdrawal would allow some to game the system whereby they subscribe, binge watch a programme or programmes, withdrawal and then repeat this process. This would allow these bad actors to benefit from our service without compensation to the detriment of the vast majority of good actors as it could likely result in a price increase given the reduction in the subscriber base and the high cost of producing high-quality content.

We are certain that this was not the intention of Government and therefore recommend that an appropriate exception to the right of withdrawal is incorporated for digital content services, such as SVOD services. Indeed, the EU has recognised this issue and incorporated this very exception in its Consumer Rights Directive and the "Omnibus" directive (Directive (EU) 2019/2161 for better enforcement and modernisation of Union consumer protection rules).

Conclusion:

We hope that these comments are helpful. Indeed, we hope that they reflect Disney's commitment to offering meaningful consumer protections to our subscribers. We would welcome the opportunity to provide the Government and MPS additional information or clarification on any points addressed herein.