

Motion Picture Association submission to the Public Bill Committee's scrutiny of the Media Bill

1. The Motion Picture Association (MPA) is pleased to respond to the Committee's call for evidence on the Media Bill ("the Bill"). MPA's remarks are focussed on the parts of the Bill regarding the regulation of on-demand programme services in the UK, principally Part 4 and Schedules 5-7¹.

About the MPA

2. The MPA is the international trade association for the major companies that invest-in, produce, distribute, and market film and television content in the UK: Walt Disney Studios Motion Pictures, Netflix Studios, LLC, Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Universal City Studios LLC, and Warner Bros. Discovery.
3. MPA member companies represent a key part of the UK film and television industry, both as significant inward investors and with a strong permanent presence in this country, including owning major production companies and facilities such as Working Title Films and Leavesden Studios.
4. The combined total UK spend on film and high-end television (HETV) productions for the 2022 was £6.27 billion². This is by a substantial margin the highest figure seen since records began.
5. Inward investment productions account for more than 80% of that total. The benefits of this are felt UK-wide, with production expanding in the UK regions, creating jobs, developing skills, and providing opportunities for people of all backgrounds to join the industry.

Proposals to regulate further on demand programme services

6. Through the Media Bill, the Government has proposed a number of changes to the regulation of on demand programme services available in the UK.
7. The Bill contains provisions providing Ofcom with new regulatory powers to draft and enforce a Video-on-Demand Code. It extends regulation to services that, while they may not be headquartered in the UK or make editorial decisions in the UK, are nonetheless made available to members of the public in the UK ("non-UK on-demand programme services").

Tier 1 Services

8. Under Part 4 and Schedule 5 of the Bill, the Secretary of state has considerable discretion in relation to the designation of Tier 1 services, including non-UK on-demand programme services.
9. These decisions have important implications for the industry, and the role of Ofcom in providing evidence to underpin the decisions should be clearly established - as the industry regulator with the overall health of the sector within its remit.

¹ Individual MPA members may have specific views on other parts of the Media Bill

² <https://www.bfi.org.uk/news/official-2022-statistics>

10. Although the Bill requires the Secretary of State to request a report from Ofcom before making the first set of regulations (Sch5, 368HB[5]), the Bill does not provide any guidance for what should go into Ofcom's report.
11. The Bill allows the Secretary of State to designate certain services as Tier 1 by name or by virtue of the fact that they fall within a specified "description" (368HB[1]). But, again, the Bill does not set out what criteria would be employed by the Secretary of State in making a designation.
12. In the interests of maintaining business and investment confidence, it would be far better to have the criteria either listed in the Bill or put on the record by Ministers as the Bill passes through Parliament. **It would helpful if Committee Members could press the Minister to make explicit the criteria the Secretary of State expects to employ during the Committee's examination of this part of the Bill and, furthermore, to request that Ministers ensure that any criteria are objective, proportionate, non-discriminatory and future proof.**
13. The Secretary of State should also be required to consult with Ofcom and industry (following production of Ofcom's report) before making regulations to designate Tier 1 services. The process should be as transparent as possible, with the Secretary of State reporting to Parliament on her intentions at the point that secondary legislation is introduced. **These duties should be specified by an addition to Clause 368HB(5). It should also allow appropriate time for implementation.**
14. Finally, it would be helpful to have the Secretary of State set out her expectations with regard to services that are not included in Tier 1. **We would be grateful if Committee Members could press the Minister for further detail on this point.**

Audience protection

15. MPA members welcome that in both the 2022 White Paper and the Media Bill, the Government has rejected a one-size-fits-all approach to audience protection for on-demand services.
16. This recognises that MPA members providing on-demand programme services already have clear and well utilised methods to protect audiences – and particularly children – online.
17. Having strong audience protection measures in place is not simply a regulatory consideration for MPA members but is integral to their carefully curated brands and continued growth in a rapidly developing and highly competitive global audio-visual marketplace.
18. BBFC ratings could be part of this for some services, if the service providers so wish, alongside global rating systems based on a number of inputs (including cross referencing against pre-existing BBFC ratings). MPA welcomes the Government's support for a flexible approach that encourages innovation and effectiveness, rather than mandating specific measures (368OB) that could increase regulatory burdens or costs. For this reason, **we urge the Government and Committee members to oppose any proposed amendments that would seek to mandate specific audience protection measures.**
19. MPA members also employ other parental controls, such as pin control systems, which are well-understood tools to help families manage their audience protection choices and preferences.
20. While MPA members broadly support the position proposed in the Bill in relation to Ofcom's discretion in relation to age ratings, it important for Ofcom to ensure that, in keeping with good regulatory principles, the regime remains affordable, workable and proportionate to the service in

question. **It would be helpful if Committee Members could press the Minister to confirm that the Government supports these regulatory principles.**

21. In preparing the new code, Ofcom will also need to ensure businesses are able to transition to the new regime – which may involve changing user interfaces – through clear guidance and sufficient time to avoid unnecessary business friction.

Ofcom standards code for Tier 1 services

22. In proposing the Bill, the Government has recognised that there are important distinctions between scheduled broadcast services and on demand programme services.
23. In particular, there is a difference between the *active* viewing choice audiences make when watching content from on-demand services and those they consume more passively from available linear channels. This affects the degree to which the regime developed for broadcast regulation can translate directly across to the on-demand world.
24. There are aspects of the proposed new ‘light touch’ regime that remain unclear and require further explanation from Ministers and/or Ofcom on how they intend to proceed. This includes, for example, the Bill’s requirement (368HG) for Ofcom to include within the video on demand code measures to preserve “due impartiality” and in the production of guidance on ways in which this can be met by service providers.
25. The Bill recognises that the nature of linear broadcasting requires certain provisions with regard to impartiality that would have little relevance in the on-demand world. However, it remains unclear how exactly the requirement for “due impartiality” would operate for on-demand services that host varied catalogues of ‘evergreen’ content in which multiple viewpoints might be expressed.
26. It is also the case that what is considered to be a controversial matter sometimes depends on where an audience is located. Services may have catalogues of content that are global by nature, available for audiences in the UK but not aimed at them specifically. One unintended consequence could be that Ofcom risks becoming a ‘global policeman’ on the issue of due impartiality, potentially ruling on titles which are not relevant to considerations of impartiality through a UK lens. This could be a consistent challenge for many services which are both global and domestic, creating a risk that programmes made for a territory that does not have due impartiality rules for VoD services will ultimately not be made available for UK consumers. We consider Ofcom should have a clearly defined obligation to take into account the level of controversy attached to any subject matter with a particular focus on the UK only.
27. Nor is it clear how the special impartiality requirements applying at the time of elections and referendums under the Broadcasting Code would be applicable with regard to on-demand services.
28. **We would welcome Committee Members pressing the Minister further on what the Government expects from Ofcom with regard to the impartiality requirements for on-demand programme services.** This is important in providing industry with greater confidence in making content investment decisions that are by their nature a long time in planning.
29. The global nature of some of our members’ catalogues also raises the concern that Ofcom may become a target for forum shopping by foreign actors who see the UK as a suitable

jurisdiction to seek redress against a particular title. This could arise, for example, when non-UK complainants inappropriately use Ofcom's complaints function as a precursor to legal action or an attempt to censor the provider. While this could have significant resource implications for Ofcom (as the Culture, Media and Sport Committee's report identified) it could also discourage streaming services from making content available in the UK if it is likely to be the target of opportunistic complaints. **We consider complaints should only be accepted from UK residents. Alternatively Ofcom should have a duty to monitor and publish the number of complaints which are made by non-UK residents, and the proportion of those complaints upheld. Again we would welcome Committee members pressing the Ministers for the Government's response on this point.**

Accessibility

30. MPA members are always working to ensure their services are as accessible to as many people as possible, for example, through the widespread use of subtitling and audio description.
31. Our members are well placed to respond to the additional requirements contained in the Bill.
32. However we do think it is important to acknowledge existing arrangements, such as the partnership relationships in place between MPA members and accessibility service providers, such as the British Sign Language Broadcasting Trust (BSLBT).
33. It has long been recognised that supporting alternative programme-making arrangements – such as those provided by BSLBT – is a valuable resource in making more content available for deaf and hard of hearing viewers.
- 34. It is important that these relationships can continue to be supported under the new regime, and we would be grateful if Committee Members could press the Minister for an assurance that this would be the case.**

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