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Lord Boswell of Aynho  
Chairman of the European Union Committee  
House of Lords  
London SW1A 0PW

CMS 294492/DC  
25 November 2016

Dear Tim,

**The Revision of the EU Audiovisual Media Services Directive**

**9479/16: Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities.**

I am writing to address the points raised by your letter to my predecessor - Ed Vaizey on 15 July 2016 on the European Commission proposals on revising the Audiovisual Media Services Directive (AVMSD). Since my predecessor's earlier correspondence in relation to the proposed amendments to the AVMSD on 15 June 2016 to the House of Commons European Select Committee - the UK negotiating position for this directive has been agreed and negotiations have begun. Given the process that the UK is preparing to undertake to leave the European Union, our negotiating position on this directive will need to remain flexible. Nevertheless, I have sought to respond to each of the points your letter raised below.

**Derogation from the country of origin principle which would permit Member States to impose levies on video-on-demand services;**

The Government does not believe that the proposed film levy for video-on-demand (VoD) providers would be of benefit to the UK audiovisual sector as a whole. The proposal would introduce an optional film levy on VoD players (such as Netflix) within countries in which these services are received. France and Germany proposed this measure as their film funding systems have been breaking down. These systems imposed a levy on hard copy video cassette and DVD rental, and with the emergence of VoD services (which is replacing hard copy rental), these funds are running low. The UK has a successful tax relief system in place for film and high-end TV programmes to incentivise productions, which are subject to state aid. On this basis, and because the levy has the potential to create a barrier to growth of smaller VoD suppliers, the UK's position is to oppose this particular proposal.



## **Derogation from the country of origin principle on grounds of national security, and how this would work in practice**

In the past years Ofcom has worked very hard with other European regulators on cases where cross-border broadcasters were regarded by the receiving member state to be in breach of the law, especially in cases where the Baltic States took issue with what they regard to be “Russian propaganda”. They found that some of the rules around jurisdiction could be clearer and there was an interest to allow member states targeted by broadcasters licensed in another member state to react more easily in case national security or public health are at risk. The proposed new Directive addresses these issues. While I regard the proposed changes as helpful for the application of the Directive I would also like to protect the freedom of broadcasting by ensuring that derogation measures are only used in the most severe cases. Derogations in severe cases are already permitted, so this provision would be making explicit the grounds and basis for any derogation.

## **On the quota proposal for European work**

I have some concerns on the effectiveness of the proposed 20% quota for European Works on VoD services, especially what is intended by the requirement to give European Works prominence. I believe that quotas could impose unnecessary burdens on new innovative services and prominence could interfere with viewer choice. There is very little evidence that quotas actually work. The UK’s position in the negotiations is to oppose any quota in this area, but we will have to be realistic in what can be achieved given that the vast majority of EU Member States are in favour of such a quota system. In the UK, the VoD providers currently exceed the 20% quota, because of the high amount of UK produced content available. We don’t think a 20% quota would in fact impact the UK market, but in opposing we are seeking to ensure that other Member States do not make proposals to increase this quota, and thereby interfere with viewer choice. UK productions will continue to qualify as ‘European Works’ following Brexit as the definition of a European work is wider than the EU and includes signatories of the Council of Europe’s transfrontier television convention.

## **The proposed co-regulatory approach for Video Sharing platforms.**

The proposals for video-sharing platforms extend the principles of protection of minors from harmful content and all citizens from ‘hate-speech’, which is already enshrined in linear television and VoD regulation, to video-sharing platforms (such as YouTube). Measures taken with respect to video sharing platforms must be appropriate and may include age verification, the ability to flag and report harmful content, parental controls and content rating tools. The UK supports measures that strengthen child protection, welcomes the requirement for age-verification for content that may impair the physical, mental or moral development of minors. However, we consider that a co-regulatory approach may not be the correct approach in all cases, and consider that the proposal should allow Member States to have self-regulatory measures if they wish to do so. This flexibility for Member States to choose the implementation approach that is correct for their market.

I hope that this gives greater clarity of the UK position during the negotiations of the AVMSD.

I am copying this letter to Sir Bill Cash MP (Chair of the House of Commons European Scrutiny Committee), Eve Samson (ESC), Chris Johnson (EUC), Les Saunders (DExEU) and Pooja Lakhani (DCMS Scrutiny Coordinator)

Yours ever

A handwritten signature in black ink, appearing to read 'Matt Hancock', with a long, sweeping flourish extending to the right.

**THE RT HON MATT HANCOCK MP**