

Consultation response form

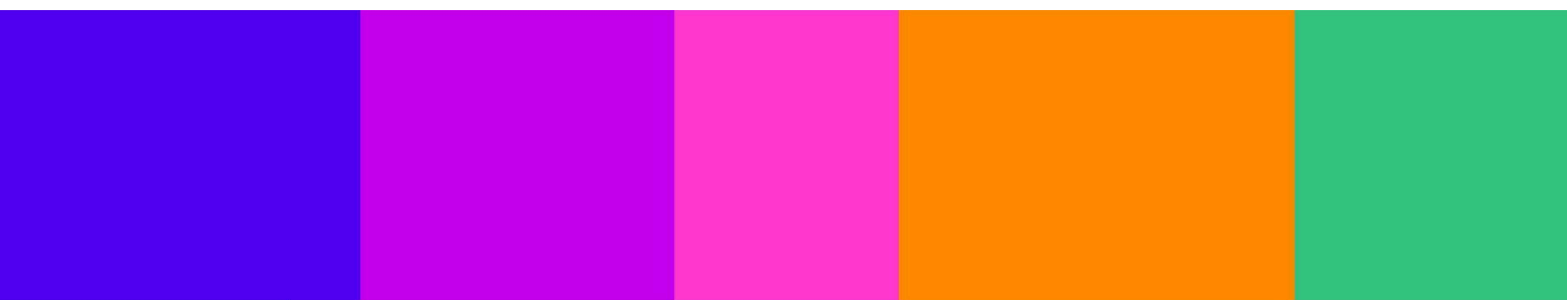
Please complete this form in full and return to vod@ofcom.org.uk.

Consultation title	Consultation: Tier 1 Standards Code
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Representing (delete as appropriate)	Organisation
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Confidentiality

We ask for your contact details along with your response so that we can engage with you on this consultation. For further information about how Ofcom handles your personal information and your corresponding rights, see [Ofcom's General Privacy Statement](#).

Your details: We will keep your contact number and email address confidential. Is there anything else you want to keep confidential? Delete as appropriate.	Nothing
Your response: Please indicate how much of your response you want to keep confidential. Delete as appropriate.	None
For confidential responses, can Ofcom publish a reference to the contents of your response?	N/A



Your response

Question	Your response
Question 1: Do you agree with Ofcom's overall approach to structuring Section One so that it supplements, but does not duplicate, the existing ODPS Rule relating to the protection of under-18s?	CCIA supports the objectives of Section One, but would prefer that the full text be incorporated directly into the Tier 1 Standards Code to improve clarity and avoid needing to cross-refer.
Question 2: Do you have any comments on the inclusion or contents of Rules 1.A, 1.B, 1.C and 1.D?	To deliver against the overall objective, it is important that Ofcom provide as clear guidance as possible over how the reporting restriction and anonymity provisions apply to globally-distributed catalogues of content which might include internationally-produced or licenced content which depicts UK legal proceedings (including dramatised or documentary depictions of historic cases). This will include both whether UK reporting restrictions are engaged and how the "jigsaw identification" concept is intended to be applied. Rules 1.A and 1.B impose production-stage welfare obligations. For licensed content — often produced years or decades ago by third parties in other jurisdictions — the Tier 1 provider typically has no oversight of, or access to records about, the original production process. Ofcom should clarify how it will assess compliance where the provider had no production involvement (e.g. whether robust contractual representations and warranties from licensors constitute sufficient "due care"); and what remediation steps are appropriate where production-level welfare information is unavailable — recognising that requiring content removal would reduce the range of content available to UK audiences.

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	Worked examples could be useful to assist compliance and avoid inconsistent application. These might distinguish between, for example: • Provider-commissioned UK content. • Internationally-commissioned content depicting UK proceedings. • Licenced library content.
Question 3: Do you have any further comments on the content of Section One?	No.
Question 4: Do you agree with Ofcom's overall approach to Section Two?	Yes. However, the contextual justification must remain integral to the interpretation and application of the rules in Section 2 and the list of examples should be non-exhaustive.
Question 5: Do you agree that, given the potential risks associated with making suicide/self-harm material available on-demand, exceptional editorial justification should be required for the inclusion of explicit detail involving novel or unusual methods in Tier 1 Services?	In order to ensure audience protection while maintaining editorial integrity, such programming should be subject to best-in-class review and scrutiny.
Question 6: Do you have any comments on Ofcom's proposed approach to the issue of photosensitive epilepsy in Rule 2.F?	We support Rule 2.F as published and encourage Ofcom to remain flexible in how international services implement protective measures for audiences, in particular, when they comply with existing international standards, which are appropriate and effective.
Question 7: Do you have any further comments on the content of Section Two	It is crucial that context remains integral to any analysis under Section Two and that it should be sufficient for services to demonstrate that they took appropriate internal steps when making editorial decisions on programming that falls within this Section. "Generally accepted standards" are not static. The Code should not be read as imposing an obligation to continuously re-audit large catalogues against evolving social norms. Ofcom should confirm that compliance is assessed primarily at the point content is made available,

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	and that the age of content and length of time on the service are meaningful mitigating factors.
Question 8: Do you agree with Ofcom's overall approach to Section Three?	Rules 3.D, 3.E and 3.F depend on access to production-level payment information that, for licensed content, sits with the underlying production company. This information is often commercially confidential or inaccessible. For example, equivalent prohibitions on payments to convicted/confessed criminals do not exist in major production territories such as Latin America, Asia Pacific, and parts of Europe. Ofcom should therefore apply the "due care" language from Rule 1.A and paragraph 3.19 to Rules 3.D–3.F; recognise lawful production overseas as a relevant mitigating factor; and clarify what remediation is appropriate where production-level information is unavailable. Those rules that are qualified by the public interest test should be considered on a global basis (i.e., not solely in the UK public interest) given that most Tier 1 Services distribute programming for a global audience rather than specifically for a UK audience.
Question 9: Do you agree with Ofcom's overall approach to structuring Section Three so that it supplements, but does not duplicate, the existing ODPS Rules on Material Likely to Incite Hatred, and Prohibited Material.	The full text should be incorporated directly into the Tier 1 Standards Code to improve clarity and avoid needing to cross-refer.
Question 10: Do you agree with the explicit addition of 'UK' to the definition of 'crime' found in this section aimed at clarifying to Tier 1 Services operating globally that this rule applies only to acts that would constitute a crime in the UK?	Yes.

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Question 11: Do you have any further comments on the content of Section Three?	No.
Question 12: Do you agree with Ofcom's overall approach to Section Four?	No response.
Question 13: Do you have any comments on Ofcom's proposed approach to assessing what might amount to 'abusive treatment' of religions?	Historical dramas and factual programmes may depict mistreatment of individuals or groups on the basis of their religious beliefs, where such depictions accurately reflect the attitudes of the society and time period being portrayed. Ofcom should confirm that such portrayals do not constitute "abusive treatment" under Rule 4.C where they serve a legitimate editorial purpose, and that the age, genre, and historical context of content are relevant factors.
Question 14: Do you have any further comments on the content of Section Four?	No.
Question 15: Do you agree with Ofcom's overall approach to Section Five?	What constitutes a "matter of political or industrial controversy or of current public policy" is not static. Content uploaded years ago may become relevant to a live policy debate simply because the political landscape has shifted. The Code should not be read as requiring Tier 1 providers to perpetually audit their catalogues for content that has become politically relevant since it was made available. The age of content and the length of time it has been on the service should be given meaningful weight. Ofcom should define the application of this Section more clearly and consider as narrow a definition as possible (i.e. limited to news programming). For example, this Section should not apply to entertainment programming that discusses (or satirises) issues of political or industrial controversy. This type of programming, which is developed for comedic and entertainment purposes and for a global (or even non-UK) audience, usually covers topics of current

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	industrial or political controversy and reflects the views of the host and the programme's editorial team (e.g. U.S. style late night talk shows and satirical formats – Jon Stewart, Jimmy Kimmel, John Oliver, Stephen Colbert, SNL). They often cover multiple subjects over the course of a 30- to 45-minute programme, and it would be difficult to track all topics covered to ensure balance of all topics. Audiences, which are typically global for a Tier 1 Service, are broadly aware that individual hosts and programmes have certain views and that they may be exaggerated for comedic and entertainment effect. It will be challenging for Tier 1 Services with smaller catalogues to ensure a balance of topics across a broad range of issues. This has the potential to significantly affect the range of content offered to viewers. We would encourage Ofcom to consider limiting this Section to news programming, narrowly defined.
Question 16: Do you have any views that you would like Ofcom to consider in relation to ways in which multiple programmes may be “appropriately signalled to viewers” for the purposes of maintaining due impartiality across multiple programmes?	The concept of maintaining impartiality across “appropriately signalled” programmes transposes a linear broadcasting model onto on-demand services. A linear broadcaster controls the sequence and timing of what audiences see; a VOD viewer actively selects content. Implementing this requirement at scale would require providers to map their entire catalogue by viewpoint and topic, maintain signalling mechanisms, and ensure linked programmes remain concurrently available - which is not within the provider's control for third-party licensed content on fixed licence windows. Even if implemented, there is no assurance viewers would consume the signalled alternative. This requirement is disproportionate to any viewer protection benefit in the on-demand context. As noted above, Ofcom should generally restrict the rules in Section Five, if they go ahead at all, to news programming, narrowly defined. Ofcom should also confirm in the guidance that Rule 5.H accommodates single-voice, authored and personal view documentaries, which are an important means of free expression and a feature of on-demand streaming services valued by consumers.

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	In order to achieve this and generally avoid unintended impacts on free expression, Ofcom should confirm that due impartiality on matters of political or industrial controversy may be preserved across a range of programmes on the service, rather than within each individual programme. To the extent that this depends on the existence of alternative viewpoints elsewhere in the services being adequately signalled, guidance on what constitutes adequate “signalling” in an on-demand environment (versus a linear schedule) is needed (e.g. clear metadata, on-service labelling, related content signposting). It will again be challenging for Tier 1 Services with smaller catalogues to ensure a balance of topics across a broad range of issues. This has the potential to significantly affect the range of content offered to viewers. We would encourage Ofcom to consider limiting this Section to news programming, narrowly defined. More broadly, Ofcom should consider how this rule would disproportionately impact Tier 1 Services with smaller catalogues and build in flexibility for those Services.
Question 17: Do you have any further comments on the content of Section Five?	No.
Question 18: Do you agree with Ofcom’s overall approach to Section Six?	No response.
Question 19: Do you agree with Ofcom’s proposal that Tier 1 Services would not be required to remove archive content at the times of elections and referendums in order to comply with the requirements of Section Six?	Yes. This is an important safeguard against election and referendum periods requiring costly and specific review of what can be large libraries, or disrupting catalogues in ways that are only likely to confuse consumers.
Question 20: Do you have any further comments on the content of Section Six?	No.

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Question 21: Do you agree with Ofcom's overall approach to Section Seven?	Ofcom should clarify in Section Seven whether it applies to programming depending on whether it is (i) produced, co-produced or commissioned by the Tier 1 Service provider (i.e. the Tier 1 Service provider has control over the production process) or (ii) licensed by the Tier 1 Service provider from a third party (i.e. programming over which the provider has no editorial involvement, and which is frequently produced years earlier and across multiple territories). Many of the envisaged requirements are not practical or proportionate for licensed content. Ofcom should confirm that where content has been produced outside the UK in compliance with the laws of another jurisdiction (e.g. where no mandatory right-of-reply exists, as in the US, Canada, and Australia), this is a relevant factor in assessing compliance; recognise that applying "editorial techniques" title-by-title is not practicable for large licensed catalogues; confirm that a fairness complaint does not automatically trigger a requirement to remove a title - this should follow only after due process and proper adjudication.
Question 22: Are there any areas in Section Seven where you would particularly welcome guidance?	Ofcom should confirm that the Practices in Rules 7.A–7.M apply primarily to programmes commissioned or produced by (or on behalf of) the Tier 1 Service provider, where the provider has control over, and involvement in, the production process. For licensed library content, over which the provider has no editorial involvement and which is often produced years earlier and across multiple territories, the provider's obligation should be confined to reasonable due diligence. Applying obligations that are premised on control of the production process (such as informed consent, contributor welfare assessments and rights of reply) to acquired content that the provider did not produce would be disproportionate and, in many cases, impossible to satisfy retrospectively (e.g. contributors untraceable, original producer defunct, no surviving production records, production long wrapped). Ofcom should reflect this difference and to confirm a

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	differentiated, due diligence based standard for third-party licensed content. The consultation appears to contemplate that Tier 1 providers may nonetheless bear responsibility for programmes in which they were not involved in production. Ofcom should address this explicitly and confirm a differentiated, due diligence based standard for licensed content. While similar concerns exist for broadcasters, they typically produce, co-produce or commission a larger proportion of their programming. The Fairness rules would potentially disproportionately impact Tier 1 Service providers in comparison to broadcasters. Ofcom should also provide guidance on how it will filter frivolous complaints under this Section - particularly for biographical or factual content where subjects may be unhappy with their portrayal but have not been treated unfairly. Ofcom should actively apply its statutory filtering criteria and ensure providers are not burdened by a volume of unjustified complaints that consume disproportionate time and resources.
Question 23: Do you have any further comments on the content of Section Seven?	No.
Question 24: Do you agree with Ofcom's overall approach to Section Eight?	Again, Ofcom should confirm whether Section Eight applies to programming depending on whether it is (i) produced, co-produced, commissioned, or licensed by the Tier 1 Service provider (i.e. the Tier 1 Service provider has control over the production process) or (ii) licensed by the Tier 1 Service provider from a third party (i.e. programming over which the provider has no editorial involvement, and which is frequently produced years earlier and across multiple territories). Many of the envisaged requirements are not practical or proportionate for licensed content.
Question 25: Are there any areas in Section Eight where you would particularly welcome guidance?	For the reasons given in relation to Section Seven, Ofcom should provide equivalent guidance confirming that the Practices in Rules 8.A–8.S apply primarily to provider commissioned or produced programmes, and that for

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	licensed content the provider's duty is limited to reasonable due diligence rather than the full suite of production stage practices (such as obtaining consent, assessment of the "warranted" test at the point of filming, or decisions on surreptitious recording), which are matters within the control of the original producer and not the licensing platform. As in Section Seven, while similar concerns exist for broadcasters, they typically produce, co-produce or commission a larger proportion of their programming. The Fairness rules would potentially disproportionately impact Tier 1 Service providers in comparison to broadcasters.
Question 26: Do you have any further comments on the content of Section Eight?	No.
Question 27: Do you have any views or comments that you would like Ofcom to take account of when preparing draft procedures for investigating potential breaches of the Tier 1 Standards Code?	In addition to the right to reply and make representations in an investigation, Ofcom should consider the processes put in place by, and decisions taken by, editorial teams in determining compliance with the Tier 1 Standards Code be given heavy weight in any investigation, as should the global nature of the offering of many Tier 1 Services. Ofcom should reflect the following in its enforcement procedures: ● Swift remediation should be incentivised. VOD services can remedy concerns promptly (correcting age ratings, adding content descriptors, or removing content). Enforcement should recognise and reward this - it is qualitatively different from linear broadcasting where a broadcast has already reached its audience. ● Proportionality for pre-Code content. Content available before the Code enters into force was produced and acquired under the previous regulatory regime. Enforcement should reflect this. ● Proportionality for the transition gap. Content currently in production - commissioned before

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	the final Code - will come onto services around the time the Code enters into force. Enforcement should recognise that production decisions were made in good faith before final requirements were known. ● Scale of catalogue is not evidence of systemic failure. Multiple isolated complaints about different licensed titles should not automatically be treated as systemic non-compliance. They may simply reflect the scale and diversity of a large international catalogue. ● UK-based complainants. Ofcom should limit assessable complaints to those from UK-based viewers. There is currently nothing preventing a viewer outside the UK from complaining about content produced in their own country.
Question 28: Do you have any comments on the impact assessment, rights assessment, equality impact assessments or Welsh language assessment? Please provide any information or evidence in support of your views.	The impact assessment should consider: ● The potential reduction in content available to UK audiences where compliance with production-focused standards cannot be demonstrated for older or international licensed content; ● The disproportionate compliance burden on VOD services compared to linear broadcasters, given the scale of licensed catalogues; ● The impact on content currently in production, commissioned before the Code was finalised; ● The cumulative regulatory burden from the simultaneous introduction of the Tier 1 Accessibility Code.
Question 29: Do you have comments on any other aspects of our proposals? Please provide your reasoning, and if possible, any supporting evidence.	Ofcom should set out clearly, and consistently, when the rules apply to original content commissioned by the provider and when they also apply to licensed content across the Code. The distinction between content that a Tier 1 provider produces or commissions (and therefore controls) and content that it merely licenses for distribution is fundamental to a proportionate compliance regime. We note that the consultation appears to confirm that, in respect of Sections Seven and Eight, Tier 1 providers may remain responsible for

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	programmes in relation to which they were not involved in the production process. If that is Ofcom's intention, we would ask that the standard expected of providers for such licensed content be expressly calibrated to what is reasonably achievable through due diligence, rather than to obligations premised on control of production. A clear, cross-cutting statement of principle on this point would significantly aid consistent and proportionate compliance. Ofcom also needs to acknowledge that there is content currently in production, which was commissioned before the final Code will be published. Production start date, not just availability date, should be recognised as relevant context in assessing compliance. This protects against penalising content that could not have anticipated requirements that did not exist when production decisions were made.

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