

Your response

Question	Your response
Question 1a: Do stakeholders agree with Ofcom's proposed guidance on control of advertising, including the application of the terms 'marketed, sold or arranged'?	Confidential? – N The proposed terms that distinguish advertising that is 'marketed, sold or arranged' from that which is not controlled by VSPs is reasonable given this wording exists in the AVMSD and subsequently in 4B of the Communications Act. In practice, the distinction between VSP controlled and non-VSP controlled advertising is unclear. For example, an advertisement by an influencer could be considered non-VSP controlled because 'the provider has not engaged with the influencer in relation to advertising' (p.13) but also 'marketed, sold or arranged' because this influencer advertisement is delivered using 'tools that enable advertisers to target or optimise the reach of their advert.' (p.13) Any form of targeted advertising (or programmatic advertising p.8) poses serious risks to children, such as excessive collection of children's data and the targeting of age-inappropriate products and services.¹ These risks are exacerbated by the fact that children are often unable to recognise commercial content.² Beyond the dual model of VSP controlled and non-VSP controlled, the guidance should state that any advertising on VSPs needs to be compliant with the ICO's Age Appropriate Design Code and Section 5 of the CAP Code. 5Rights recommends an addition to 3.6 to this effect;

¹ [Reset Australia](#) created 'dubious ads' and got approval from Facebook to deliver ads that reinforced body ideals to those profiled as between 13-17 and interested in 'extreme weight loss'. Reset did not run the ads, but [news coverage](#) suggests this content is reaching children.

² Global Action Plan report, [Kids for Sale: Online Advertising and the manipulation of children](#).

	Adverts included on a VSP: Must be compliant with the ICO's Age Appropriate Design Code and Section 5 of the CAP Code.
Question 1b: If you do not agree with the proposed guidance on control of advertising, please explain why, and include any alternative approaches.	Confidential? – N Under the proposed guidance, ASA (Advertising Standards Authority) is to be appointed co-regulator with Ofcom acting as regulatory backstop for VSP controlled advertisements. Non-VSP controlled advertising is subject to measures under Section 15A which outlines relevant requirements all VSP's must take to protect the public from harmful material. Importantly for children, this includes material that 'might impair the physical, mental or moral development of under 18's' for which Ofcom provided an illustrative list of examples in previously proposed guidance.³ It is important that children receive 'equivalent protections' (2.6, p.5) from the self-regulatory framework provided by the ASA, as they would under Ofcom's statutory duties were the VSP regulation not repealed. The ASA's CAP Code currently defines children as anyone under the age of 16, rather than 18 as is defined by the United Convention on the Rights of the Child and the VSP guidance. 5Rights recommends that; There is a common definition of a child as anyone under the age of 18 adopted by both Ofcom and the ASA to ensure regulatory alignment. 5Rights recommends that an addition is made to 3.6; d) children (all users under the age of 18) are not subject to programmatic advertising on VSPs The majority of children spend the majority of

³ Ofcom, Consultation – 3.11 in the [Guidance for video-sharing platform providers on measures to protect users from harmful material](#), March 2021.

	their time on services not designed with them in mind.⁴ A lack of age assurance and a prevalence of recommendation algorithms are among the factors that result in children being treated as adults in the digital environment. This includes being targeted with age-inappropriate products on mixed audience services. Section 5 of the CAP Code outlines requirements for advertisers in cases where ‘Marketing communications [are] addressed to, targeted directly at or featuring children’. To be enforceable and fit for purpose in the proposed co-regulatory framework, the ASA’s CAP Code Section 5 must be broadened⁵ to reflect the reality that children are currently served advertising directly, indirectly and on non-child directed services. The ASA’s current system of warning advertisers and, in some cases, issuing take down notices when they are found to break the CAP Code, does little to protect children from viewing that marketing content in the first place. Nor does this approach rule out repeat breaches. The current figures from ASA are evidence of the fact that age-restricted ads are reaching children.⁶ Given the risks posed to children by programmatic advertising, 5Rights recommends that this form of advertising is subject to the strictest measures, in accordance with the data processing requirements set out in the Age Appropriate Design Code. 5Rights recommends an addition to 3.6 so that
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⁴ Ofcom’s Report- [Online Nation 2021](#), reported that “A notable proportion of children aged 12 and under named social media or messaging services with a minimum user age of 13 as their favourite apps, including TikTok and Instagram.” 5Rights report, [Pathways: How digital design puts children at risk](#), July 2021 reveals that companies are targeting children with age specific advertising and also serving those same children suicide, self-harm, eating disorder and sexual content.

⁵ The Cap Code should read; ‘marketing communication addressed to, targeted directly at (including through algorithms) or featuring children.’

⁶ ASA [monitoring results](#) note; ‘Between January and March 2021, using monitoring tools to capture age-restricted ads served on a sample of 49 websites and 12 YouTube channels attracting a disproportionately high child audience, we found that: Overall, 158 age-restricted ads broke the advertising rules; and In total, 41 advertisers placed age-restricted ads in 33 websites and 8 YouTube channels aimed at, or attracting a disproportionately large, child audience.’

	this reads; Adverts on VSPs: Must not use tools that target or extend the reach of the advert to target users under the age of 18.
Question 2a: Do stakeholders agree with Ofcom's proposed framework for regulating VSP-controlled advertising?	Confidential? – N N/A see above
Question 2b: If you do not agree with the proposed framework for regulating VSP-controlled advertising, please explain why, and include any alternative approaches for regulating advertising on VSPs.	Confidential? – N N/A
Question 3a: Do stakeholders agree with Ofcom's proposal to designate the ASA as a co-regulator for VSP-controlled advertising?	Confidential? – N It is welcome that Ofcom has been named the regulatory backstop for VSP controlled advertisements. It is positive that Ofcom is using existing co-regulatory arrangements with the ASA. However, it is Ofcom that has full enforcement powers available, powers which can be used as and when ASA refers to Ofcom. The number of children use video sharing platforms is growing.⁷ Rather than rely on enforcement when 'serious or repeated' (5.22, p.18) breaches have already occurred, the ASA should be granted enforcement powers to ensure children are adequately protected.

⁷ Ofcom's [Children and parents: media use and attitudes report 2020/2021](#), revealed that 97% of 5-15s consume content via VSPs and that two of the top 3 apps among children aged 5-15 were VSPS (YouTube and TikTok).

Question 3b: If you do not agree that it would be appropriate to designate the ASA as a co-regulator for VSP advertising, please explain why, and include any alternative approaches.	Confidential? – N It is encouraging that the Government is planning to consult on measures to enhance how online advertising is regulated in the UK. (2.7). Meanwhile, as the VSP regime introduces some mandatory requirements for the regulation of advertising on VSPs, this could be an opportunity to strengthen the ASA’s existing self-regulatory model. Ofcom is part of the Digital Regulation Cooperation Forum along with the CMA, ICO and FCA. Given how advertising intersects with the areas of focus for these regulators, and how advertising is core to the business model that members regulate, the ASA should be included within the forum. Membership could be used to enable greater consistency, collaboration, and regulatory alignment.
Question 4a: Do stakeholders agree with Ofcom’s proposed guidance on non-VSP-controlled advertising?	Confidential? – N It is understood that VSP requirements will be superseded by the Online Safety Bill. However, the inclusion of influencer advertising (an example of non-VSP controlled advertising) in the Online Safety Bill⁸ means that the detail included in Section 6 should be transposed into the Online Safety Bill and its accompanying codes.
Question 4b: If you do not agree with the proposed guidance on non-VSP-controlled advertising, please explain why, and include any alternative approaches.	Confidential? – N As discussed in response to question 1a, the distinction between VSP controlled and non-VSP controlled advertising is unclear. This binary definition and dual enforcement approach is not as future proof as providing one approach for all online advertising, with robust enforcement powers. See responses to 1a and to 3a for more on these points.

⁸ Online Safety Bill, Chapter 6 Interpretation of Part 2, 39 (7) states that ‘paid-for advertisement’ is out of scope of the Bill, implying that influencer user generated content that contains advertising would fall within scope.

Question 5a: Do stakeholders agree with Ofcom's proposed approach to regulating non-VSP-controlled advertising?	Confidential? – N N/A
Question 5b: If you do not agree with the proposed approach to regulating non-VSP-controlled advertising, please explain why, and include any alternative approaches.	Confidential? – N N/A

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