



# Regulatory fees for on-demand programme services

Statement

Publication date:

9 May 2017

## About this document

In this document, Ofcom outlines its new regulatory fees regime for on-demand programme services (“ODPS”) under section 368NA of the Communications Act 2003 (“the Act”).

Our proposal is to introduce a tiered fees structure; there will be no fees for the smallest providers, and the largest fees will be paid by providers with the largest annual turnover.

Since 1 January 2016, Ofcom has been the sole regulator for editorial content on ODPS and did not charge fees for the financial year 2016/17. Following a recent consultation on our proposals we intend to introduce this new fee structure in 2017/18.

This new fees regime will be introduced with immediate effect.

# Contents

Section		Page
1	Executive Summary	1
2	Background	2
3	Consultation and responses	4
Annex		Page
1	Legal and Financial Background	8
2	Fee structure options	11
3	Regulatory Cost Estimates	15

Section 1

# Executive Summary

- 1.1 Ofcom regulates on-demand programme services (“ODPS”) in the UK under rules set out in Part 4A of the Communications Act 2003 (the “Act”). It has held this responsibility since assuming sole regulatory duties for editorial content on ODPS from the Authority for Television on Demand (“ATVOD”) on 1 January 2016. Since this time, and given that the ATVOD surplus passed to Ofcom covered Ofcom’s 2016/17 planned ODPS costs, Ofcom has not levied fees for the costs of discharging its regulatory responsibilities, but intends to do so for the financial year 2017/18.
- 1.2 In order to introduce an appropriate fees regime, Ofcom examined both the likely cost of these regulatory responsibilities and ways of levying fees to sustain and encourage ODPS in a rapidly changing digital environment.
- 1.3 Ofcom consulted on four different fee structure options, including a recommended option, and took account of stakeholder responses on these. As a result, we have now decided on a new fee regime and will proceed to introduce it.
- 1.4 Smaller ODPS providers (with an overall annual turnover less than £10 million) will not pay any fees. The costs will be shared between the larger providers on a tiered basis, linked to their turnover. This is set out in the table below.

Category	Turnover Band	Fee (estimated)
C	under £10m	£0
B	>£10m but less than £50m	£2,073
A	>£50m	£4,146

- 1.5 In this document, we confirm our new regulatory fees regime under section 368NA of the Act and the actual fees applying for the 2017/18 financial year.
- 1.6 Given the ODPS sector is still developing, with the number and type of ODPS providers changing over time, Ofcom will keep this fee regime under review, as required.

## Section 2

# Background

## Introduction

- 2.1 On demand programme services (“ODPS”) are regulated in the UK under rules set out in Part 4A of the Communications Act 2003 (the “Act”). Ofcom is the sole appropriate regulatory authority for editorial content in the absence of a co-regulator being designated under section 368B.
- 2.2 Ofcom has been sole regulator for editorial content on ODPS since the designation of the Authority for Television on Demand (“ATVOD”) came to an end on 31 December 2015. The Advertising Standards Authority remains co-regulator for advertising content on ODPS.
- 2.3 As sole regulator for editorial content on ODPS, Ofcom has a number of functions under Part 4A including:
- (a) To act as a body to whom a person can notify an intention to provide an ODPS as defined under section 368A(1), or to significantly change a notified ODPS, or to cease to provide an ODPS, as they are required to do under section 368BA. Ofcom also enforces the notification requirements under section 368BB.
  - (b) To take steps to secure that ODPS providers comply with:
    - (i) substantive rules in relation to harmful material (section 368E), sponsorship (section 368G) and product placement (section 368H); and
    - (ii) administrative rules in relation to provision of information to users, retention of programmes, and cooperation with the appropriate regulatory authority.
  - (c) To encourage ODPS providers to make ODPS progressively more accessible for individuals with visual or hearing impairments (section 368C(2)).
  - (d) To promote, where practicable and by appropriate means, production of and access to European works as defined by the Audiovisual Media Services Directive 2010 (the “AVMS Directive”) (section 368C(3)).
  - (e) To issue enforcement notifications for breaches of substantive or administrative rules under section 368I.
  - (f) In appropriate cases, to impose financial penalties for breaches of substantive or administrative rules, or for failure to notify provision of an ODPS, under section 368J.
  - (g) In appropriate cases, to suspend or restrict services for contraventions of rules or for incitement of crime or disorder (sections 368K and 368L).

## Regulatory fees

- 2.4 There are costs associated with fulfilling Ofcom’s functions under Part 4A of the Act and, consequently, Ofcom may levy fees on ODPS providers pursuant to section

368NA of the Act, although it is not required to do so. If it does, these must not exceed an estimate of likely costs for carrying out relevant functions. Ofcom must be satisfied that any fee we require a provider to pay represents the appropriate contribution of that provider to those costs. The fee must also be justifiable and proportionate bearing in mind the provider who will have to pay it and the functions for which it is imposed. Ofcom may also require the provision of information from those appearing to be ODPS providers, under section 368O.

- 2.5 During its period as co-regulator, ATVOD charged fees to ODPS providers to cover the costs of regulation, as set out in Section 368NA of the Act. This enabled ATVOD to recoup its estimated costs for the year. The ATVOD fees were set on a tiered basis, and the annual fee for providers in ATVOD's final year of operation ranged from £96 up to £14,135, depending on turnover of the service provider company, with a group cap of £28,725 available for ODPS providers in the same corporate group.
- 2.6 In March 2016, we published a Statement which stated that Ofcom would not charge fees to service providers in the financial year 2016/17. This was because the incremental cost involved in Ofcom becoming sole regulator for editorial content on ODPS was estimated to be so small, that it would be covered by the surplus ATVOD sent to Ofcom, in respect of that financial year. However, we committed to reviewing this position with regard to future financial years.
- 2.7 In this document, we confirm our new regulatory fees regime under section 368NA of the Act and the actual fees applying for the 2017/18 financial year.

## Section 3

# Consultation and responses

- 3.1 This section briefly outlines the four options we proposed in our consultation<sup>1</sup> for an appropriate fee structure for future financial years. It also outlines Ofcom's likely regulatory costs in this sector for 2017/18. See Annex 2 for a detailed explanation of those options and our reasoning for recommending our preferred option (Option 4), a tiered fee structure with no fees for the smallest providers. See Annex 3 for our assessment of costs and how the fee will be levied between ODPS.
- 3.2 This section then outlines Ofcom's consultation questions and a summary of the responses we received together with our proposed action.

## Proposed options for a future fee structure

### Option 1: Levying no fee for any ODPS provider

- 3.3 We considered an incremental increase in the fees paid by all broadcast licensees, rather than fees imposed specifically on ODPS providers. However, despite the relatively low costs of ODPS regulation, we proposed that it would be fairer if a new regime, targeted at ODPS, was introduced.

### Option 2: Levying the same fee to all ODPS providers

- 3.4 While this option was simple, we provisionally considered it would not be justifiable and proportionate for smaller providers to pay fees. This would impose a burden on small new entrants to the market, which could inhibit investment and affect innovation and diversity in the sector. It could also discourage the notification of services to Ofcom, with consequent detriment to citizens and consumers.

### Option 3: Levying a fee for all providers, but not at the same level for each

- 3.5 Given the very small sums likely to be paid by the smallest providers, we proposed that designing a potentially complex fee regime would create disproportionate costs. Those would be passed on to ODPS providers in future years.

### Option 4: Sharing costs only between the largest providers

- 3.6 This option involved providers with an overall turnover of less than £10 million paying no fees. Those with turnover between £10 million and £50 million would pay a fee set at one level and those whose turnover exceeded £50 million would pay a higher one.
- 3.7 In light of our assessment of the others, this was our preferred option. It would remove the burden from the smallest providers, while sharing the costs between the larger ones. It would be pragmatic and relatively simple to administer.
- 3.8 There are further details on our reasoning and how the bandings were calculated in Annex 2.

---

<sup>1</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0030/97158/VOD-fees-structure-consultation-300117.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0030/97158/VOD-fees-structure-consultation-300117.pdf)

## Likely costs

- 3.9 Ofcom estimated the costs of carrying out our functions for ODPS for the financial year to 31 March 2018. This includes direct costs of £82,000 (staff and research), indirect costs of £33,000 (overheads) and a small surplus of £1,000. See Annex 3 for a more detailed breakdown of costs.

## Consultation Questions

- 3.10 We consulted stakeholders on two key questions:

*(i) Do you agree with Ofcom's preferred proposal to adopt a fees structure that shares the cost of regulating ODPS only between the largest providers (Option 4)? If not, which alternative option do you consider would provide a proportionate, fair and pragmatic basis for a fees structure?*

*(ii) Do you agree that Ofcom's costs estimate is appropriate in relation to carrying out their relevant ODPS functions for 2017/18, and that the estimated fee for 2017/18 is sufficient to meet but not exceed such costs?*

## Consultation responses and our decisions

- 3.11 Ofcom received six responses to the consultation. These included responses from A+E Networks UK (“AETN”), the Commercial Broadcasters Association (“COBA”), Curzon Home Cinema (“Curzon”), Sky UK Ltd (“Sky”) and Vevo (UK) Ltd (“Vevo”), as well as a confidential respondent.
- 3.12 Set out below is a summary of issues raised by stakeholders, Ofcom’s response to them and final decisions.
- 3.13 The full published responses can be found on Ofcom’s website.

## Stakeholder responses to proposals and Ofcom’s final decisions

### Fee options and thresholds

- 3.14 All respondents agreed that Ofcom should adopt its preferred approach. AETN, for example, said it would not impose an unwelcome burden on start-ups or discourage notification of services to Ofcom.
- 3.15 Some respondents attached caveats to their responses. Sky said it objected in principle to only the largest ODPS operators paying fees. The confidential respondent made a similar point. Sky also said that Ofcom’s costs were more likely to be in relation to smaller operators not linked to linear broadcast services who may not have the financial means or incentives to have an effective regulatory compliance programme. It said that to promote “compliance discipline”, all ODPS providers, regardless of size, should contribute towards costs of regulation. However, both Sky and the confidential respondent accepted that Ofcom’s preferred option was appropriate and pragmatic in the present circumstances.
- 3.16 Some also commented on the way Ofcom proposed to base fees on a provider’s overall turnover and the proposed fees thresholds. AETN thought assessing overall



turnover might encourage some providers to remodel their corporate structures, which could threaten Ofcom's income to regulate this sector. Curzon said the assessment should be based solely on VOD platform turnover or group digital turnover, noting that the majority of its revenue comes from cinema ticket sales.

- 3.17 AETN and COBA also said the threshold for payment was set too high at £10 million and would place an unfair or disproportionate burden on the largest providers. AETN suggested an additional banding between £5 million and £10 million, while COBA said the threshold for the top band could be reduced to £5 million. COBA also contended that much of Ofcom's work in this sector involved adult only services, many of which had a turnover below the £10 million threshold.

### Ofcom response

- 3.18 Ofcom has carefully considered the responses. For the reasons set out more fully in Annex 2, we have decided to adopt our proposed option 4, with the thresholds set on the bases and at the levels proposed.

- 3.19 In particular, our assessment is that it would not impose disproportionate costs and burdens on the 'long tail' of small providers, stifling innovation and diversity in the on demand sector, nor, in all the circumstances, on larger providers (more of whom paid higher fees in ATVOD's final year of operation). It would not discourage providers from notifying services to Ofcom, and it would be pragmatic and straightforward to administer. On those grounds, and as more fully set out in Annex 2, our judgment is that the approach we have decided upon would result in providers paying appropriate, justifiable and proportionate fees in accordance with the relevant provisions of the Act.

- 3.20 We will therefore introduce a tiered fee structure as outlined in the consultation based on the overall turnover of ODPS Providers. Please see table below:

Category	Turnover Band	Fee (estimated)
C	under £10m	£0
B	>£10m but less than £50m	£2,073
A	>£50m	£4,146

### **Review**

- 3.21 Given the rate of change across the ODPS sector, a number of respondents argued for an early review of the new fees regime. COBA and Sky expressed concern that Ofcom's costs may increase as regulation in this area increases, referring to the proposed introduction of statutory oversight of access services through the Digital Economy Bill. COBA requested a review of the chosen threshold levels if fees rise in the future. Sky urged Ofcom to keep its approach to ODPS fees under review in order to ensure fees remain justifiable and proportionate and that all ODPS providers are making an "appropriate contribution". It also said that Ofcom should not materially increase fee levels without reviewing the size and type of services that are required to pay such fees. AETN encouraged Ofcom to regularly review its approach to fees as the on demand sector grows and matures.

### Ofcom response

- 3.22 Again, we have taken careful account of the responses. We agree that, while we judge our chosen approach to be appropriate in the current circumstances, we would review it if those circumstances change. We will therefore keep the fee regime under review, as required.
- 3.23 In addition, we are required under the Act to consult providers likely to be required to pay a fee (i.e. those likely to fall into Category A or B above) in such a manner as we consider appropriate. We would generally do this by writing to such providers at about the time of the publication of our proposed Annual Plan, which is usually around December of each year, with estimated costs and resulting fees for the following financial year. We would publish a finalised figure with the Tariff Tables each March.

### **Overall costs**

- 3.24 There were only three responses to the second consultation question on whether Ofcom's estimate of the costs of regulation was appropriate for carrying out its relevant ODPS functions for 2017/18, and that the estimated fee for 2017/18 is sufficient to meet but not exceed such costs. The confidential respondent said the estimates appeared low and that Ofcom should satisfy itself that they cover all relevant costs. AETN also described the costs as modest and said Ofcom should keep them under review. Vevo agreed with the estimates.

### Ofcom response

- 3.25 We are satisfied that our estimates cover the costs of performing our relevant functions in 2017/18 and that the fee structure we have decided to adopt would meet, but not exceed this.
- 3.26 As set out in section 368NA of the Act, in future years we will prepare an estimate of the likely costs of carrying out our functions each year and ensure that the aggregate amount of the fee charged is sufficient to meet, but not exceed the estimate.

## Annex 1

# Legal and Financial Background

A1.1 This document outlines the legal context in which Ofcom charges fees to ODPS providers to support regulation of the sector. It also provides background on the fees regime carried out by the previous regulator, the Authority for Television On Demand (“ATVOD”).

## Legal context

A1.2 The provisions relevant to setting an appropriate fee structure are contained in sections 368NA(2) to (4) of the Act. They make clear that Ofcom may (but need not) levy a fee on particular ODPS providers, and that what is considered an appropriate contribution which is justifiable and proportionate may vary as between providers. The statute states:

*“(2) The authority [Ofcom] may require a provider of an on-demand programme service to pay them a fee.*

*(3) The authority must be satisfied that the amount of any fee required under subsection (2)—*

*(a) represents the appropriate contribution of the provider towards meeting the likely costs described in subsection (5)(a), and*

*(b) is justifiable and proportionate having regard to the provider who will be required to pay it and the functions in respect of which it is imposed.*

*(4) A different fee may be required in relation to different cases or circumstances.”*

A1.3 The provisions relevant to setting the appropriate fee (given the structure adopted) are contained in sections 368NA(5) to (7) of the Act. They make clear that providers likely to be required to pay a fee in a particular financial year must be consulted on Ofcom costs estimates for that year, and that surpluses and deficits for previous financial years may be carried forward and taken into account in that calculation. The statute states:

*“(5) The authority [Ofcom] must, for each financial year—*

*(a) prepare such estimate as it is practicable for them to make of the likely costs of carrying out the relevant functions during that year;*

*(b) ensure that the aggregate amount of the fees that are required to be paid to them under subsection (2) during that year is sufficient to enable them to meet, but not exceed, the costs estimated under paragraph (a);*

*(c) consult in such manner as they consider appropriate the providers likely to be required to pay them a fee under subsection (2) during that year;*

*(d) publish in such manner as they consider appropriate the amount of the fees they will require providers to pay to them under subsection (2) during that year.*

*(6) As soon as reasonably practicable after the end of the financial year, the authority must publish a statement setting out, for that year—*

*(a) the aggregate amount received by them during that year in respect of fees required to be paid under subsection (2);*

*(b) the aggregate amount outstanding and likely to be paid or recovered in respect of fees that were required to be so paid under subsection (2); and*

*(c) the costs to them of carrying out the relevant functions during that year.*

*7) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (6) is to be—*

*(a) carried forward; and*

*(b) taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (5)(b) in relation to the following year.”*

A1.4 Section 368NA(5)(a) of the Act makes reference to “relevant functions”, which is defined under section 368NA(11). This refers to Ofcom’s functions as “the appropriate regulatory authority”, and section 368B limits these to functions described in Part 4A of the Act.

## Previous position on fees

A1.5 By way of context for Ofcom’s decision as set out in this statement, we took into account some key and relevant facts about the fees structure in the final year of ATVOD’s operation, given that it was the appropriate regulatory authority at that time (2015/16):

- a) ATVOD’s estimated costs for the year were just over £487,000 and the fees collected were just over £488,000.
- b) The 40 largest ODPS providers each paid over £5,000 and accounted for over 93% of fees.
- c) ATVOD differentiated between those in the largest group, with the largest “Super A” providers paying £10,893 each for single outlet services and £14,135 for multiple outlet services (with a group cap available where there were multiple providers in one corporate group). “A Rate” providers paid £5,010 for single outlet services and £6,502 for multiple outlet services.
- d) None of the remaining 77 providers (the “long tail”) paid more than £815, and 40 of these paid £204 or less. These providers accounted, in total, for under 7% of fees.

A1.6 As set out in our statement entitled “*Future regulation of on-demand programme services*”, published on 31 March 2016 (the “**March 2016 Statement**”)<sup>2</sup> we expected Ofcom’s incremental costs of ODPS regulation to be relatively low for a number of reasons. For example, certain cost categories, such as the ATVOD Board and CEO, which would not need to be replicated, while others such as cost allocation for office accommodation and IT would be lower due to Ofcom’s existing

---

<sup>2</sup> [https://www.ofcom.org.uk/consultations-and-statements/category-1/vod\\_procedures](https://www.ofcom.org.uk/consultations-and-statements/category-1/vod_procedures)

scale. As set out below, the estimated costs and fees are significantly lower for all ODPS providers than they were under ATVOD.

- A1.7 The March 2016 Statement said we would not levy a fee for the 2016/17 financial year because, “incremental costs are so small that they are likely substantially to be covered by the surplus which will pass from ATVOD to Ofcom in respect of fees collected but not spent in the 2015/16 financial year.” This has also transpired and a small surplus of £1,000 has been carried forward in the fees calculation set out in this document.

## Annex 2

# Fee structure options

- A2.1 This Annex outlines in detail Ofcom’s reasoning behind the option for a new fee structure which will now be adopted following consultation. In making our decision and before we consulted, we carried out impact assessments on the range of potential proposals.
- A2.2 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom’s activities.

### Option 1: Levying no fee for any ODPS provider

- A2.3 The first option Ofcom considered was to charge no fee at all to any ODPS provider. The use of the permissive “may” in section 368NA(2) of the Act and reference to “any fee” in section 368NA(3) indicates Ofcom is not strictly required to levy a fee, albeit there are inevitably some costs as a result of functions involved in regulating ODPS.
- A2.4 Nevertheless, it was our provisional view that recovering the relatively modest costs of ODPS regulation via a fee levied on ODPS providers under section 368NA would be appropriate.
- A2.5 We previously considered the alternative of recovering costs via charges on broadcasting licensees set in accordance with Ofcom’s Statement of Charging Principles under section 347 of the Act. This option would have resulted in marginally higher fees for broadcasting licensees for 2017/18 than would otherwise be the case.
- A2.6 We recognised this would result in an incremental cost for those broadcast licensees who are not also ODPS providers, while a smaller number of large ODPS providers, on whom it may be appropriate to levy a charge, would not have been required to make a contribution. While the sums involved would be very limited, we recognised the possible unfairness to those broadcast licensees who did not operate ODPS, particularly as the ODPS sector develops further.
- A2.7 On balance, we considered this outweighed the administrative disadvantages of having a separate system to cover the current relatively low costs associated with ODPS regulation. We maintain that view.

### Option 2: Levying the same fee to all ODPS providers

- A2.8 The second option was to apply a fee to *all* notified ODPS providers (either on a per-provider or per-service basis). This would have involved charging all ODPS providers the same sum.
- A2.9 At time of consultation, there were 113 ODPS providers notified to Ofcom under section 368BA of the Act, providing approximately 280 services. As set out in

further detail in paragraph A3.2 our estimated total cost for Ofcom regulating ODPS in 2017/18 is £114,000. Under Option 2, this would have approximated to £1,000 per provider, or £400 per service. There were several reasons why we provisionally considered it would not be justifiable and proportionate to require smaller providers to pay this sum.

- A2.10 In particular, we took into account that the “long tail” of small ODPS providers includes very small businesses with low numbers of users, and we were particularly concerned not to impose additional cost and administrative burden on these. It includes a number of not-for-profit operators, as the test on who must register as an ODPS does not involve assessment of means or financial motive. A fee of the level indicated would not be very large, but nor would it have been insignificant for the small ODPS providers. It is important to note that Ofcom’s duties under section 3 of the Act include having regard to the desirability of promoting competition in relevant markets and encouraging investment and innovation. Small providers can offer welcome diversity and innovation to the on demand sector and we would not want to discourage this.
- A2.11 We were also mindful of the particular practical difficulties of identifying non-notified ODPS which exist online only and not through traditional broadcast platforms. A fee of the level indicated might discourage some ODPS providers from notifying under section 368BA, which is both unlawful and an impediment to resolution of substantive complaints. It may have the unwelcome consequence of driving providers to intentionally avoid regulation and compliance of their services to the detriment of citizens and consumers.
- A2.12 For the above reasons, we did not favour and do not adopt Option 2.

### **Option 3: Levying a fee for all providers, but not at the same level for each**

- A2.13 Option 3 would have involved levying a fee for all providers but on a sliding scale to address the potential unfairness in Option 2.
- A2.14 Option 3 would have, in practice, meant an essentially nominal fee to small providers. In the final year of ATVOD’s operation, the 40 smallest providers paid between £96 and £204. Given Ofcom’s lower overall costs, roughly equivalent fees could have been under £50. It was our view that designing a potentially complex calculation in order to charge such small sums to a limited number of providers would have created disproportionate costs in recovering such sums, which would be passed on to ODPS providers in future years.
- A2.15 We did not, therefore, propose to adopt Option 3, and we do not do so now.

### **Option 4: Sharing costs between the largest ODPS providers**

- A2.16 Given the reasoning set out above, our preferred option was Option 4, which involved the waiving of fees for smaller ODPS providers, instead sharing the cost between the largest providers. We noted in the consultation that this, of course, would require a cut-off point below which no fee would be payable. Inevitably, that would mean that providers just above the cut-off point would pay and those just below would not, despite potentially being quite similar. However, we took into account that this is inherent in the existence of a cut-off point and that in time providers close to the boundary may rise above or fall below the cut-off.

- A2.17 We said that this preferred Option 4 could be specified in a number of different ways. We put forward our view that there is no single, unique solution which is “justifiable and proportionate” within the meaning of section 368NA(3)(b) of the Act. Instead, there are a range of alternatives meeting that requirement and we applied our regulatory judgement as to which to adopt.
- A2.18 We have considered carefully which approach to use to assess the size of an ODPS provider. There are a number of alternatives which could be used individually or in conjunction with one another. Each has advantages and disadvantages in terms of accuracy, comparability and appropriateness for determining what would be justifiable and proportionate. For example, we considered:
- a) **User numbers:** We understand that there is a lack of a straightforward, shared approach in the sector to measuring this in terms of unique users, time spent, use across different platforms and so on. We also appreciated that this is not always a good proxy for revenue generation, which varies by business model.
  - b) **ODPS-specific revenues:** There are often significant practical difficulties in differentiating this from revenues from non-ODPS online services (e.g. subscriptions to text based services or banner advertising on such services) and from broadcasting revenues (given ‘catch-up’ services may be packaged with broadcast services and in subscription deals and there are similar difficulties in relation to advertising revenues).
  - c) **Employee numbers for ODPS:** There would also be issues over allocation of time (e.g. for ‘catch up’ ODPS providers which also provide linear television, many employees are likely to be involved in both aspects to some degree). Again, there would also be a risk that this approach would not capture differences in business models, such as the extent to which different ODPS buy in content, rather than producing it in-house.
- A2.19 Our preferred approach, which we have decided to adopt, was to define the size of an ODPS provider by reference to its revenue from all sources. We noted that this was not a perfect proxy for the size of ODPS operations, and could capture revenues which were not directly related to ODPS operations. However, we considered that a revenue basis provides one reasonable measure of the resources available to a provider to pay a fee, it is relatively stable over time, is more easily verifiable than some of the other options, is relatively straightforward and is adaptable to market change.
- A2.20 This lack of unnecessary complexity was and is particularly important in the current context of a fee which is small in absolute terms. The purpose of assessing the size of providers is to produce a fair cut-off rather than to create a complex fees calculation. We take the view that, while not insurmountable in theory, requiring providers to develop new means of recording revenues or audiences at this stage in the development of the sector would not be a proportionate way to proceed in the context of an industry of the present size and with low regulatory costs. Overall provider revenue is a reasonable, pragmatic means of assessment that was justifiable and proportionate to categorise providers for fee purposes.
- A2.21 We did not propose to charge a different sum for providers with multiple outlets, as there are different approaches to “branding” offerings, including through multiple, overlapping services. We wish to encourage ODPS providers to clearly differentiate brands so users can readily identify a service against the list of notified ODPS if concerns arise. There would be a risk that this would not be done effectively if there



were fee implications involved in notifying multiple outlets. We have therefore decided to adopt this aspect of our proposal.

- A2.22 We proposed obtaining provider turnover for the relevant *calendar* year (rather than accounting) year. The calculation of turnover for the calendar year, where this does not correspond to the accounting year, would be determined in accordance with the Ofcom Statement of Charging Principles issued 8 February 2005<sup>3</sup>. Again, we have decided to take this approach.
- A2.23 We said we would charge providers with total turnover<sup>4</sup> exceeding £50m (“Category A providers”) the standard annual fee; and those providers with total turnover greater than £10m but not exceeding £50m (“Category B providers”) 50% of the standard annual fee. We proposed to charge no fee to smaller providers with a total turnover not exceeding £10 million (“Category C providers”).
- A2.24 We estimated, based on publicly available data and market information, that approximately 21 providers fell into Category A and approximately 13 into Category B. Based on the estimate of costs for 2017/18 of £114,000, this would result in a fee of £4,146 for Category A providers and £2,073 for Category B providers. Category C providers (the majority of providers) would not pay any fee. These are the fees we have decided to impose.

Category	Turnover Band	Fee (estimated)
C	under £10m	£0
B	>£10m but less than £50m	£2,073
A	>£50m	£4,146

- A2.25 These are lower in many cases than providers paid in ATVOD’s final year of operation. A slightly larger group paid in excess of £5,000 in that year and providers who fell into the “Super A” category paid substantially more (almost £11,000 for single outlet services and just over £14,000 for multiple outlets).
- A2.26 As noted above, there are clearly many different ways to design a system sharing costs between the largest providers. In our judgment, the approach we have adopted is within the range of those which are justifiable and proportionate. In particular, it shares the cost across a range of providers with the ability to pay. It also avoids creating an overly complex or burdensome system for providers, which would be out of proportion with the current level of costs involved in ODPS regulation

## Annex 3

# Regulatory Cost Estimates

- A3.1 We set out below our estimate of the costs of carrying out our functions for ODPS for the financial year to 31 March 2018.
- A3.2 As mentioned above, our estimated total cost for Ofcom regulating ODPS is £14,000. This includes:
- a) direct costs (including staff £32,000 and research costs £50,000) of £82,000;
  - b) indirect costs of £33,000 including premises: ICT; HR; Finance: and non-sector specific activities; and
  - c) estimated surplus for the period 1 January 2016 to 31 March 2017 of £1,000.
- A3.3 The staff costs allocation included above is based on an assessment of staff time recorded against relevant functions under Part 4A of the Act during 2016.
- A3.4 For research costs, included in direct costs above, this is an area where costs are higher than those recorded under ATVOD. However, the research that is likely to be reflected here would have also been covered to some extent by “Ofcom’s recouped costs” in ATVOD’s previous fees calculation.
- A3.5 Ofcom regularly produces research reports with a direct bearing on the ODPS sector, including the PSB Annual Research Report,<sup>3</sup> the Adult Media Use and Attitudes Report,<sup>4</sup> the Children and Parents Media Use and Attitudes Report,<sup>5</sup> and the Communications Market Report.<sup>6</sup> We consider £50,000 represents an appropriate contribution towards that work, and towards any ODPS-specific research we may need to carry out in 2017/18.
- A3.6 We are mindful that section 368NA of the Act limits us to recovering sums involved in carrying out relevant functions specifically under Part 4A of the Act, so have not sought to allocate a cost reflecting all matters relevant to ODPS covered by Ofcom research. If we took this approach we would arrive at a figure substantially higher than £50,000. Nevertheless, much of our research is clearly relevant to Part 4A functions. For example, it gives a measure of usage of ODPS (including by children) and an understanding of attitudes towards matters relevant to ODPS content such as potentially harmful material. Without such work, we would be less able to carry out Part 4A functions effectively.
- A3.7 We have calculated the figure for indirect costs allocated to the ODPS sector in accordance with the approach set out in Ofcom’s Statement of Charging Principles. These indirect costs cover the common activities required for the delivery of the regulation of the VOD sector (including premises costs, ICT and HR).

<sup>3</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0018/80046/psb-annual-report-2016.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0018/80046/psb-annual-report-2016.pdf)

<sup>4</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/80828/2016-adults-media-use-and-attitudes.pdf?lang=ugovrjuc](https://www.ofcom.org.uk/data/assets/pdf_file/0026/80828/2016-adults-media-use-and-attitudes.pdf?lang=ugovrjuc)

<sup>5</sup>

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/78513/childrens\\_parents\\_nov2015.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/78513/childrens_parents_nov2015.pdf)

<sup>6</sup> <https://www.ofcom.org.uk/research-and-data/cmr/cmr16>

## Future regulation of on-demand programme services

- A3.8 We did not charge any fee for the period from 1 January 2016 to 31 March 2017 when Ofcom took on sole regulation of ODPS as we estimated the surplus transferred from ATVOD would approximately cover the first year of operation. As stated above, a small surplus of £1,000 has also been estimated up to 31 March 2017, and this slightly reduces the amount we need to recover in fees for 2017-18.
- A3.9 Given the above, we are required to ensure the aggregate amount of fees are sufficient to meet, but not exceed, the estimate.
- A3.10 We have decided to charge only the larger providers. We estimate that approximately 21 of them are likely to have a turnover over £50 million per annum, and a further 13 between £10 million and £50 million. Based on our Option 4, a cost estimate of £114,000 equates to a fee of £4,146 per provider for the largest (Cat A) providers, and £2,073 for the next largest providers (Cat B).
- A3.11 Fees will be charged by reference to the total turnover<sup>7</sup> in the relevant calendar year, two years prior to the charging year e.g. the calendar year 2015 turnover will be used for the determination of fees for the financial year fees for 2017/18. The choice of calendar year is so that all stakeholders will have submitted their statutory accounts and be on the same basis for the determination of fees. We will write to providers in due course requesting turnover figures, which we may take steps to verify.
- A3.12 Conditions may change in the future such that, for example, it is more practicable to ask providers to calculate relevant turnover in relation to ODPS, as is the case for television and radio for example. For the foreseeable future, however, fees will be determined annually on the same basis as above (Category A providers paying 100% of the standard fee, Category B providers 50%, and Category C providers 0%).
- A3.13 As set out in section 368NA of the Act, in future years we will prepare an estimate of the likely costs of carrying out our functions each year and ensure that the aggregate amount of the fee charged according to the above formula is sufficient to meet, but not exceed, the estimate. We are required under the legislation to consult providers likely to be required to pay a fee (i.e. those likely to fall into Category A or B) in such a manner as we consider appropriate. We have set out elsewhere in this statement how we are likely to do that.

---

<sup>7</sup> Total turnover is defined as “Turnover of the VOD provider according to the total turnover as per the Statutory accounts of the provider.”