

BBC Worldwide's submission to Ofcom's consultation entitled "Procedures for handling appeals on scope and for imposing sanctions in relation to On-Demand Programme Services".

11th February 2011

1. Fines

The one size fits all approach for the diverse VOD industry raises several issues:

Some VOD services are merely catch-up services that are ancillary to linear TV business models yet other pay-per-view VOD businesses are successful standalone businesses in their own right. It could make sense to differentiate between ODPSs that are ancillary services to Ofcom licensed linear services and those ODPSs that have no such affiliation.

BBCW European channels are licensed by Ofcom under the country of origin principle. As the Broadcasting Code is more stringent than the standards imposed on ODPSs, broadcasters could find themselves punished twice for the same editorial breach where a catch-up VOD service follows on from a linear broadcast. This breaches natural justice.

The definition of qualifying revenue is broad. Some guidance on the interpretation of section 368J of the Communications Act would be useful, particularly the meaning of sub-section (4). Where subscribers to a pay TV service receive catch-up VOD services as added value for no additional subscription fee, potentially there will be no revenue to base the calculation upon or it will be difficult to quantify the revenue. Published, fixed fines on a sliding scale for the separate sorts of VOD businesses seem more suitable based on audience reach and audience viewing of the ODPS, with serious sanctions applied following repeated serious breaches. A sliding scale would separate those businesses that receive little or no incremental revenue in relation to VOD from those businesses that derive significant revenues from a core VOD business model (and are not liable to be fined by Ofcom for an antecedent broadcasting breach).

2. ATVOD

The protection afforded to service providers by the appeal process is reduced by there being no obligation upon ATVOD to make determinations as to whether VOD services are ODPSs within a fixed or reasonable period of time or as a matter of course for each application. It is unclear whether ATVOD will, or is under an obligation to, make a determination about each VOD service that notifies. It would be helpful to enshrine the principle that ATVOD will make determinations upon request (within a fixed timescale) and that no obligation to pay notification fees or any liability will arise until the appeals process has run its course. As the appeals process is dependent upon this prior process, it is vital that the entire process is clarified.