

The logo for The Authority for Television On Demand (ATVOD) features the letters 'ATVOD' in a bold, white, sans-serif font, centered within a solid black rectangular background.

THE AUTHORITY FOR TELEVISION ON DEMAND

Rules & Guidance

Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services (ODPS)

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The Rules & Guidance

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Introduction

The Purpose of This Document

The Rules in this document set out the statutory requirements with which providers of On-Demand Programme Services (ODPSs) falling within the scope of regulation of on-demand editorial services must comply (“the Rules”) and the accompanying Guidance (“the Guidance”) is provided as an aid to interpretation of those requirements. For the avoidance of doubt, the guidance is not determinative of compliance with the Rules or with the corresponding statutory requirements.

This document does not incorporate the statutory requirements that relate to advertising in On-Demand Programme Services. Ofcom has designated the Advertising Standards Authority with the relevant powers to regulate advertising in ODPS with effect from 1 September 2010.

Legislative Background to the Rules

The Rules have been drawn up in accordance with the Audiovisual Media Services Regulations 2009¹ and the Audiovisual Media Services Regulations 2010² (“the Regulations”) which came into force on 19 December 2009 and 18 March 2010 respectively. The Regulations implement the Audio Visual Media Services Directive³ (“AVMS Directive”) and amend the Communications Act 2003 (“the Act”) by inserting new sections 368A – 368R (inclusive), 368BA, 368BB and 368NA and setting out other consequential statutory amendments.

The Rules in this document replicate the relevant provisions of the Act, which apply to all on-demand programme service providers falling within the scope of section 368A of the Act (“Service Providers”).⁴ All Service Providers must comply with the relevant provisions of the Act. For the avoidance of doubt all references to the Rules will be taken as a reference to the corresponding statutory provisions in the Act and any contravention of the Rules will be a contravention of the Act.

Co-Regulation: Ofcom and ATVOD

The Act provides for a system of co-regulation for on-demand programme services which fall within the Act. Ofcom has designated ATVOD to be the appropriate regulatory authority under Section 368B of the Act for notifications and for on-demand editorial content (including

¹ SI 2009 No 2979 http://www.opsi.gov.uk/si/si2009/uksi_20092979_en_1

² SI 2010 No 419 http://www.opsi.gov.uk/si/si2010/uksi_20100419_en_1

³ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC

⁴ ATVOD’s Guidance on Who Needs to Notify is available at http://atvod.co.uk/downloads/who_should_notify.pdf

sponsorship and product placement) in relation to the functions set out in Sections 368BA, 368BB, 368C, 368D, 368E, 368G, 368H, 368I(1)(a), 368NA and 368O of the Act.⁵

Although Ofcom has designated ATVOD to carry out a range of regulatory functions, Ofcom retains legislative backstop powers, including the power to impose statutory sanctions on providers who contravene the relevant requirements. Ofcom and ATVOD recognise the importance of a clear, transparent and consistent approach to regulation and of avoiding duplication and ‘double jeopardy’.

ATVOD is required to be independent of Service Providers. It will, in performing its functions and duties, including securing compliance by service providers, through the application of the Rules, with their statutory obligations, have due regard to the principles under which regulatory activity should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

The Rules

The Rules set out the compliance obligations under the Act concerning editorial content for Service Providers. They replicate the relevant sections of the Act, and have been amended only where necessary for meaning. In the event of any unintended conflict in meaning or interpretation between the Rules and the Act, the Act shall prevail. For the avoidance of doubt, a contravention of the Rules shall be considered to be a contravention of the corresponding provision in the Act. Any reference in this document to ensuring compliance with the Rules or to a contravention or a breach of the Rules should be interpreted accordingly.

Guidance on the Rules

ATVOD has published the Guidance as an aid to interpretation of the statutory requirements, as set out in the Rules. ATVOD is willing to respond to individual requests for general guidance on its interpretation of the statutory requirements, but it cannot and does not undertake prior clearance of on-demand programme service content. Any such additional guidance given is informal only and is without prejudice to the right of both ATVOD and Ofcom to investigate and act in the event of a contravention.

It is the responsibility of Service Providers to ensure they comply with their statutory obligations under the Act. They should seek their own legal advice on any compliance issues. ATVOD does not accept liability for any loss or damage alleged to result from reliance placed on either its published Guidance or any supplementary informal guidance it may give.

Service Providers should use the ATVOD website to keep up to date on published determinations under the Rules and changes that may from time to time be made to ATVOD’s current interpretation of the Rules, as set out in the Guidance.

⁵ The Designation document can be found on ATVOD’s web site at: <http://www.atvod.co.uk>

Enforcement

Where, after following its published procedures, ATVOD finds that a Service Provider has contravened any of the applicable requirements, it will normally publish a determination and explain why the Service Provider has been found to be in breach. If necessary, ATVOD can use its powers under the Act to issue statutory enforcement notifications.

The requirements specified in an enforcement notification may in particular include requirements to do one or more of the following:

- cease providing or restrict access to a specified programme, or to programmes of a specified description;
- provide additional information to users of the service prior to the selection of a specified programme by the user for viewing;
- publish a correction in the form and place and at the time specified
- publish a statement of the findings of ATVOD in the form and place and at the time specified.

It is the duty of a provider to whom an enforcement notification has been given to comply with it. That duty is enforceable in civil proceedings by ATVOD:

- for an injunction;
- for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
- for any other appropriate remedy or relief.

ATVOD may also refer contraventions of the Rules, and hence of the corresponding statutory requirements, to Ofcom for consideration of more serious sanctions, including financial penalties or suspension of the service, and giving directions under the Act. The amount of a financial penalty imposed on a provider will not exceed 5% of the provider's applicable qualifying revenue⁶ or £250,000, whichever is the greater amount.

⁶ 'Applicable qualifying revenue' is defined in s368J of the Act.

The Rules and Guidance

GUIDANCE reflecting ATVOD's current interpretation is provided in italics beneath each rule and is shaded in green. For the avoidance of doubt, the Guidance is not intended to augment the Rules or corresponding statutory requirements. **Compliance with the Guidance is not determinative of whether or not the Rules and the corresponding statutory requirements have been complied with.**

Statutory definitions are provided where appropriate and are shaded in blue.

Administrative Rules

Rule 1: Notification of intention to provide an On-Demand Programme Service⁷

A person must not provide an on-demand programme service unless, before beginning to provide it, that person has given a notification to the appropriate regulatory authority of the person's intention to provide that service.

A notification must be sent to the appropriate regulatory authority in such manner as the authority may require and must contain all such information as the authority may require.

Where, on 18 March 2010, an on-demand programme service is already being provided by a person, that person's obligation to give a notification before beginning to provide that service has effect as an obligation to give a notification before 30 April 2010 and that notification must state that the person is already providing the service (rather than that the person intends to do so).⁸

GUIDANCE:

In order to satisfy the obligation to notify, a Service Provider must complete a Notification Form (a copy of this can be found at www.atvod.co.uk or is available on request from notifications@atvod.co.uk or by post from ATVOD, 27 Sheet Street, Windsor, Berkshire, SL4 1BN) and submit a hard copy of that completed form to ATVOD (as the appropriate regulatory authority) at:

*ATVOD Notifications
27 Sheet Street
Windsor
Berkshire
SL4 1BN*

⁷ Section 368BA of the Act.

⁸ Regulation 13 of the Audiovisual Media Services Regulations 2010.

Rule 2: Notification of intention to make significant changes to a notified service⁹

A person who has given a notification must, before providing the notified service with any significant differences, give a notification to the appropriate regulatory authority of the differences.

A notification must be sent to the appropriate regulatory authority in such manner as the authority may require and must contain all such information as the authority may require.

GUIDANCE:

Significant changes include: changes to name of the service provider, changes to name of the service, changes to ways in which the service is sub-divided, changes to the means of accessing the service, changes to the type of content made available for viewing, and changes to service provider contact details.

In order to satisfy the obligation to notify, a Service Provider must send full written details of the intended changes to notifications@atvod.co.uk or by post to:

ATVOD Notifications
27 Sheet Street
Windsor
Berkshire
SL4 1BN

Rule 3: Notification of intention to cease providing a notified service¹⁰

A person who has given a notification must, before ceasing to provide it, give a notification to the appropriate regulatory authority of the intention to cease to provide the service.

A notification must be sent to the appropriate regulatory authority in such manner as the authority may require and must contain all such information as the authority may require.

GUIDANCE:

In order to satisfy the obligation to notify, the notification must include the date on which the service provider intends to cease providing the service, whether the service is expected to be provided by a third party after that date and, if the service is expected to be provided by a third party after that date, the contact details for that third party.

The Service Provider must send full written details of the intention to cease providing a service to notifications@atvod.co.uk or by post to:

ATVOD Notifications
27 Sheet Street
Windsor
Berkshire
SL4 1BN

⁹ Section 368BA of the Act.

¹⁰ Section 368BA of the Act.

Rule 4: Payment of required fee¹¹

The provider of an On-Demand Programme Service must pay to the appropriate regulatory authority such fee as that authority may require under section 368NA of the Act.

GUIDANCE:

An invoice will be issued in respect of each notified service. In the first instance, this invoice will be issued on the basis of the self-assessment made in the notification that the elements that comprise the service constitute a single On-Demand Programme Service (ODPS). If upon further investigation ATVOD concludes that the service notified in fact constitutes two or more separate ODPS, further notifications will be required, and further invoice issued. Non-payment may result in a fine and/or suspension of the On-Demand Programme Service.

Rule 5: Retention of programmes for at least 42 days¹²

The provider of an On-Demand Programme Service must retain a copy of every programme included in the service for at least forty-two days after the day on which the programme ceases to be available for viewing.

A copy of a programme retained must be of a standard and in a format which allows the programme to be viewed as it was made available for viewing.

GUIDANCE:

Picture and sound should not have been significantly altered on the retained copy (for example by cropping or darkening of picture, or by reducing or distorting sound); picture and sound quality on the retained copy should be equivalent to that made available for viewing. The format in which the copy is retained should allow it to be provided to ATVOD (if required under Rule 6) in the manner required.

Rule 6: Provision of information¹³

The provider of on an On-Demand Programme Service must comply with any requirement to provide information under section 368O of the Act. "Information" includes copies of programmes.

The appropriate regulatory authority may require a person who appears to them to be or to have been a provider of an on-demand programme service and to have information that they require for the purpose of securing compliance with the obligations of the United Kingdom under the Audiovisual Media Services Directive to provide them with all such information as they consider necessary for that purpose.

The appropriate regulatory authority may not require the provision of information under section 368O unless they have given the person from whom it is required an opportunity of

¹¹ Section 368D(3)(za) of the Act.

¹² Section 368D(3)(zb) of the Act.

¹³ Section 368D(3)(a) of the Act.

making representations to them about the matters appearing to them to provide grounds for making the request.

The appropriate regulatory authority must not require the provision of information under section 368O except by a demand for the information contained in a notice served on the person from whom the information is required that describes the required information and sets out the appropriate regulatory authority's reasons for requiring it.

A person who is required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by the appropriate regulatory authority in the demand for information.

GUIDANCE:

If a person is required to provide a copy of a programme, the manner specified may include providing a copy of a programme, or a specified number of copies, in a particular format, such as DVD.

Rule 7: Co-operation¹⁴

The provider of an On-Demand Programme Service must co-operate fully with the appropriate authority for any purpose within section 368O(2) or (3).

GUIDANCE:

A service provider may be required to co-operate for the purposes of an investigation into a possible failure to comply with the statutory requirements, or in order to calculate applicable qualifying revenue, or to secure compliance with the United Kingdom's obligations under the AVMS Directive.

Rule 8: Compliance with enforcement notifications¹⁵

A provider to whom an enforcement notification has been given must comply with it.

Rule 9: Supply of Information¹⁶

Service Providers must supply the following information to users of the service—

- (a) the Service Provider's name;
- (b) the Service Provider's address;
- (c) the Service Provider's electronic address;
- (d) the name, address and electronic address of any body which is the appropriate regulatory authority for any purpose in relation to the Service Provider or the service that they provide.

¹⁴ Section 368D(3)(b) of the Act.

¹⁵ Section 368I of the Act.

¹⁶ Section 368D (2) of the Act. Service Providers should also note the obligation to provide information under section 368O of the Act.

GUIDANCE:

Service Providers have discretion as to how they “supply” the required information to users of the service. It could be by making the information available on the Service Provider’s own website and/or in response to written requests from users. The main purpose of this obligation is however to enable users of the service to contact the Service Provider or the appropriate regulatory authority. It must therefore be freely and easily available to members of the public on demand.

Suggested format for information:

- *Name of Service Provider (and logo)*
- *Postal Address*
- *Email address*
- *Web site address*
- *Name, address and electronic address of (i) ATVOD as the appropriate regulatory authority for editorial content; and (ii) the ASA as the appropriate regulatory authority for advertising content; together with an explanation of the co-regulators’ roles, as follows:*

“The Authority for Television On Demand Ltd (“ATVOD”) regulates the editorial content of on-demand programme services. This includes ensuring that rules governing material likely to incite hatred, material which might seriously impair the development of under 18s, product placement in programmes and sponsorship of individual programmes or services are observed. You can submit a complaint about any of these aspects of our on-demand service to ATVOD using the online complaint form at www.atvod.co.uk/complaints/submit-a-complaint

You can also send your complaint to ATVOD by email to complaints@atvod.co.uk or by post to ATVOD Complaints, 27 Sheet Street, Windsor, Berkshire, SL4 1BN

Please note ATVOD are the regulators in respect of the editorial content on our video on demand services only. Advertising within our services is regulated by the Advertising Standards Authority. You can access the ASA complaints procedure on-line at <http://www.asa.org.uk/Complaints>. You can also complain to the ASA by post to Advertising Standards Authority, Mid City Place, 71 High Holborn, London WC1V 6QT or by telephoning 020 7492 2222

Any queries relating to matters such as technical issues, billing, installation or marketing should be made directly to us at [contact details for service provider].

Further information about ATVOD can be found at www.atvod.co.uk, and about the ASA at www.asa.org.uk ”

Definition of ‘electronic address’ - section 368D(4)

“Electronic address” means an electronic address to which users may send electronic communications, and includes any number or address used for the purposes of receiving such communications.

Editorial Content Rules

Rule 10: Harmful Material: Material Likely to Incite Hatred¹⁷

An on-demand programme service must not contain any material likely to incite hatred based on race, sex, religion or nationality.

GUIDANCE:

'Hatred' is a strong word. It is neither the purpose nor the intention of section 368E(1) of the Act to restrict legitimate freedom of speech by prohibiting or restricting discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse for groups covered by this requirement. For example it is permissible to express criticism, dislike or ridicule of a religious belief system or its practices or urge its adherents to cease practising or to express views which are sexist, insulting or offensive but which stop short of being likely to incite hatred.

Content alleged to be likely to incite hatred will be considered in the full context of the programme and/or on-demand programme service in which it is made available. Intention will be relevant to determining if material is likely to incite hatred. However, intention may be inferred having regard to all the circumstances.

This requirement does not replace the applicable criminal law or give ATVOD powers which are the preserve of the law enforcement authorities.

'Race' means a group of persons defined by reference to colour, race or ethnic or national origins.

Material likely to incite hatred could be contained in the spoken word, behaviour, visual images or audio sounds or a combination of all or any of these and is likely to include threatening behaviour or words.

Rule 11: Harmful Material: Protection of Under-18s¹⁸

If an on-demand programme service contains material which might seriously impair the physical, mental or moral development of persons under the age of eighteen, the material must be made available in a manner which secures that such persons will not normally see or hear it.

GUIDANCE:

In its response¹⁹ to the Ofcom report on Sexually Explicit Material and Video On Demand Services²⁰, Government stated that it intended to address this issue

¹⁷ Section 368 E (1) of the Act.

¹⁸ Section 368(E) (2) of the Act.

¹⁹ <http://www.culture.gov.uk/images/publications/EVletter-to-ed-richards-3aug2011pdf.pdf>

²⁰ <http://stakeholders.ofcom.org.uk/internet/Sexually-Explicit-Material-VOD.pdf>

comprehensively in the 2011 Communications Review of the current regulatory framework to support the communications sector. Government further stated that there is a good case that the existing Regulations require a precautionary approach and requested that Ofcom and ATVOD take any steps necessary in the interim period to ensure that children remain adequately protected under the ATVOD Rules, in the knowledge that Government could bring forward further Regulations in the short term if it proved necessary to support this position.

In light of this, and given the importance of protecting children and young people from harmful content, ATVOD has confirmed its precautionary approach to its interpretation of the wording of the Act and service providers should have this in mind when applying Rule 11 to the content of their services for the purpose of ensuring compliance. Ofcom has made clear that it supports ATVOD's precautionary approach.

In considering any particular case, ATVOD's approach in the first instance will be to determine whether the content in question falls within the high statutory test contained in this requirement.

Clearly, content that is illegal (e.g. criminally obscene or indecent) may not be included in an on-demand programme service since the provision of such material is unlawful.

Content whose broadcast complies with the Ofcom Broadcasting Code, or that has been classified by the BBFC in any category except 'R18', would not be considered material that "might seriously impair" and would not therefore be subject to the requirements of Rule 11.

However, adopting a precautionary approach, ATVOD's guidance is that "material which might seriously impair the physical, mental or moral development of minors" when provided as part of an on-demand programme service may include content that has been classified 'R18' by the BBFC, or material equivalent to content classified in that category.

Therefore 'R18' material or 'R18'-equivalent content should only be made available in on-demand programme services in a manner which secures that persons under the age of eighteen will not normally see or hear it. Service providers should also be aware that the provision of 'R18' material or 'R18'-equivalent content in a manner which allows children to access it may constitute a criminal offence under the Obscene Publications Act 1959 & 1964. See the relevant section of the Crown Prosecution Service Legal Guidance to Prosecutors at http://www.cps.gov.uk/legal/l_to_o/obscene_publications/).

'Material which might seriously impair the physical, mental or moral development of persons under the age of eighteen' may also include the types of material listed below. (This is not intended to be an exhaustive list and is open to review from time to time.):

- content which is illegal, e.g. criminally obscene or indecent;
- content which promotes illegal or harmful activity;
- highly sexualised portrayals of children ;
- pornographic content which:

- is likely to encourage an interest in sexually abusive activity, for example through the simulation or description of acts of paedophilia, incest or non-consensual sexual activity,
 - involves an act which may cause lasting physical harm,
 - involves an act of penetration by any object associated with violence or likely to cause physical harm, or
 - involves strong physical or verbal abuse.
- sexual violence which endorses or eroticises the behaviour with insufficient contextual justification;
 - portrayals of sadistic violence or torture with insufficient contextual justification;
 - graphic images of real injury, violence or death presented with insufficient contextual justification.

Provided the material is not illegal, content which ATVOD considers falls under this Rule (i.e. **'material which might seriously impair the physical, mental or moral development of persons under the age of eighteen'**) may be made available in an on demand programme service provided access is controlled in a manner which secures that persons under eighteen **'will not normally see or hear'** such material.

ATVOD's provisional interpretation of this requirement is that there should be in place an effective Content Access Control System ("CAC System") which verifies that the user is aged 18 or over at the point of registration or access by the mandatory use of technical tools for age verification and, if age verification does not take place each time the user returns to the service, controls further access to such content when the user returns to the service by the use of mandatory security controls such as passwords or PIN numbers.

Technical tools which may be acceptable for age verification purposes include:

- Confirmation of credit card ownership or other form of payment where mandatory proof that the holder is 18 or over is required prior to issue.²¹
- A reputable personal digital identity management service which uses checks on an independent and reliable database, such as the electoral roll.
- Other comparable proof of account ownership which effectively verifies age.

Where they are required, CAC Systems must be fit for purpose and effectively managed so as to ensure that in ATVOD's opinion persons under the age of eighteen will not normally see or hear material which "might seriously impair". ATVOD will consider the adequacy and effectiveness of CAC Systems on a case by case basis and keep them under review in the context of on-demand programme services.

As regards who is responsible for any required CAC Systems, including ensuring they are operating effectively, ATVOD's 'Guidance on who needs to notify' explains how to determine the person with 'editorial responsibility' for the on demand programme service.

²¹ ATVOD will not regard confirmation of ownership of a Debit, Solo or Electron card or any other card where the card holder is not required to be 18 or over to be verification that a user of a service is aged 18 or over.

Meaning of 'pornographic'

As defined in section 63 of the Criminal Justice and Immigration Act 2008:

An image is “pornographic” if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

Where an image forms part of a series of images, the question whether the image is pornographic is to be determined by reference to:

- (a) the image itself, and
- (b) if the series of images is such as to be capable of providing a context for the image, the context in which it occurs in the series of images.

So, for example, where:

- (a) an image forms an integral part of a narrative constituted by a series of images, and
- (b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,

the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.

Rule 12: Sponsorship²²

(1) An on-demand programme service or a programme included in an on-demand programme service must not be sponsored—

- (a) for the purpose of promoting cigarettes or other tobacco products, or
- (b) by an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products.

GUIDANCE:

This includes non-tobacco products or services which share a brand name with a tobacco product which is prohibited by law from advertising in other UK media. The definition of a 'tobacco product' is set out at the end of this section.

(2) An on-demand programme service or a programme included in an on-demand programme service must not be sponsored for the purpose of promoting a prescription-only medicine.

GUIDANCE:

Whilst it is possible for a manufacturer of prescription only medicines to sponsor a service or programme, sponsorship announcements may not contain any references to prescription-only medicines.

²² Section 368G of the Act.

(3) An on-demand programme service may not include a news programme or current affairs programme that is sponsored.

GUIDANCE:

Any programme containing local, national, or international news may be considered by ATVOD to be a 'news programme'. Any programme containing explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy may be considered by ATVOD to be a 'current affairs programme'. However, comedic treatments of news and current-affairs related matter would not be interpreted as constituting a 'news programme' or a 'current affairs programme'. Short specialist reports (including sport, travel and weather reports) may be sponsored provided they are distinct from news or current affairs programmes (e.g. by using different presenters and sets).

(4) Paragraphs (5) to (11) apply to an on-demand programme service that is sponsored or that includes any programme that is sponsored.

(5) The sponsoring of a service or programme must not influence the content of that service or programme in a way that affects the editorial independence of the provider of the service.

GUIDANCE:

Rule 12(5) does not prevent sponsors from having an involvement in the commissioning and creation of programmes (as is likely to be the case with advertiser-funded programmes). However, sponsorship arrangements should not lead to the creation of content that is a vehicle for the purpose of promoting the sponsor or its interests, or the distortion of editorial content for that purpose. Service providers must ensure that they retain ultimate control over the programmes on their service. Editorial control over a service or programme should never be ceded to a sponsor.

(6) Where a service or programme is sponsored for the purpose of promoting goods or services, the sponsored service or programme and sponsorship announcements relating to it must not directly encourage the purchase or rental of the goods or services, whether by making promotional reference to them or otherwise.

GUIDANCE:

Content of sponsored programmes

References to the sponsor or its products or services are permitted in a sponsored programme. However, with the exception of sponsorship announcements, any reference to a sponsor's products, services or trade mark which is embedded within the editorial content of a sponsored programme for a commercial purpose and in return for payment or other valuable consideration will be treated as product placement and should comply with the requirements set out under Rule 13 below.

In the case of an advertiser-funded programme, where the sponsor has been involved in the creation of the programme, any reference to the sponsor or its interests is likely to be

considered to be deliberate and therefore subject to the product placement rules. References to generic products or services that are associated with the sponsor may also be treated as product placement depending on the circumstances. For example, a generic reference to a product that is synonymous with the funder is more likely to be treated as product placement than a generic reference to a product that is not associated with a particular brand.

Sponsor references (specific or generic) that do not result from a commercial arrangement should be justified by the editorial requirements of the programme and not be unduly prominent. In particular they

- should not encourage, or appear to encourage, the purchase or use of the sponsor's products or services;*
- should not promote such products or services or portray them in a particularly favourable or positive light.*

If the sponsored programme features a user competition, and the sponsor provides the competition prize as a condition of the sponsorship arrangement, the prize is therefore included in the programme in return for payment or other valuable consideration and will be treated as product placement. Given the manner in which prizes may be described, the placement of competition prizes is likely to be incompatible with the product placement Rules (see condition C under Rule 13).

However it is possible for sponsors to donate competition prizes in the programmes they are sponsoring. Any such references to the sponsor or its products or services should not be included in the programme as a condition of the commercial arrangement between the sponsor and the service provider or programme producer. Further, such references will need to be editorially justified and should not appear to be promotional.

Sponsorship announcements can be made during the programme itself but in such circumstances should be distinct from the editorial content and should not be unduly prominent (see guidance below on the content of sponsorship announcements).

Consumer advice programmes

There is no prohibition on the sponsorship of programmes offering users advice on what to buy or where to go etc. However, any sponsorship arrangement must be fully compliant with these Rules. Depending on the type of programme, the choice of sponsor for consumer advice programmes may therefore be limited by Rules 12(5) and 12(6) above.

Sponsorship by a sponsor whose products or services are likely to be featured in the programme may be considered a breach of Rule 12 because a positive review of the sponsor's product within the programme could be seen as promotional for the sponsor, and therefore in breach of Rule 12(6). Deliberate exclusion of the sponsor's product from the programme in order to avoid a contravention of Rule 12(6) could amount to an unacceptable influence on the editorial content, and therefore a breach of Rule 12(5).

Content of sponsorship announcements (see also Rules 12(8) and 12(9) below)

The requirements of Rule 12(6) extend also to the content of sponsorship announcements. A reference to a sponsor in the context of the sponsorship arrangement is likely to amount to a sponsorship announcement. Sponsorship announcements should not contain:

- calls to action, or
- encouragements to purchase or use the products or services of the sponsor or a third party.

ATVOD recognises that when judging whether the various components of a sponsorship announcement amount to a direct encouragement of the purchase or rental of the goods or service, fine editorial judgements are often required. We are likely to take into account a number of factors including, but not limited to the use of the sponsor's slogans, straplines, jingles and so on. It is possible for some sponsor's slogans and straplines to be used within an announcement provided they do not encourage the purchase or rental of the sponsor's products/services (e.g. by featuring claims).

Claims about the sponsor's products/services (in particular those that are capable of objective substantiation), may be considered as promotional messages. Examples include:

- claims about market leadership, health benefits, efficacy; and
- the use of promotional language and/or superlatives to describe the sponsor and/or its products and services (e.g. referring to: the breadth of range of products a sponsor provides or how easy a sponsor's product is to use).

Calls to action: announcements that contain direct invitations to the audience to contact the sponsor are likely to breach the Rule. However, basic contact details (e.g. websites or telephone numbers) may be given in announcements, but these should not be accompanied by language that is likely to be viewed as an invitation to the audience to contact the sponsor. Any direct appeals to the viewer to buy or try the sponsor's goods or services or to contact the sponsor for more information are likely to breach the Rule.

Service providers should note that the requirements for sponsorship announcements on linear services are generally greater than those for on-demand services. A credit which has been judged to comply with the rules for linear services is therefore also likely to comply with the requirements of Rule 12(6). There is an exception in relation to the placement of sponsorship credits, see Rule 12(9), where the requirements are more prescriptive for non-linear services in that a sponsorship credit must appear at the beginning or end of a programme (whereas in linear services the sponsorship credit may appear 'during' the programme as an alternative to appearing at the beginning or end.)

(7) Where a service or programme is sponsored for the purpose of promoting an alcoholic drink, the service or programme and sponsorship announcements relating to it must not—

- (a) be aimed specifically at persons under the age of eighteen; or
- (b) encourage the immoderate consumption of such drinks.

GUIDANCE:

Whether a programme is aimed specifically at persons under the age of eighteen will depend not only on the content of the programme but also on how it is organised, presented, or marketed to users. A programme that would not normally be judged to be aimed specifically at persons under the age of eighteen may nevertheless be found to do so where it is marketed in a way that is designed to appeal to those under the age of eighteen.

The restriction applies both to the content of the programme and to the content of the sponsorship announcement. "Encourage" and "immoderate" will be judged in the context of the programme itself having regard to all the surrounding circumstances including any editorial justification and the programme narrative.

(8) A sponsored service must clearly inform users of the existence of a sponsorship agreement.

GUIDANCE:

Service providers are free to decide how to inform their users that the service itself (or a part of the service) is sponsored. This may be done – for example - when the service is first accessed, when browsing the catalogue, or whilst viewing a programme. Any information given to comply with this rule must also comply with the provisions of Rule 12(10) below.

(9) The name of the sponsor and the logo or other symbol (if any) of the sponsor must be displayed at the beginning or end of a sponsored programme.

GUIDANCE:

The purpose of this requirement is to ensure users are aware of the identity of the sponsor and of the sponsor's relationship with the sponsored programme. Service providers may describe this relationship in any manner they wish provided the sponsor's involvement with the programme is clear to the user, although announcements that suggest the sponsorship arrangement has in any way compromised the requirements of these Rules should be avoided.

With regard to the placement of the name and logo or other symbol (if any) of the sponsor, the requirements are more prescriptive for on-demand services than for television broadcast services in that a sponsorship credit must appear at the beginning or end of a programme (whereas in television broadcast services the sponsorship credit may appear 'during' the programme as an alternative to appearing at the beginning or end).

This is a minimum requirement. Sponsorship announcements may also be made during a programme. Service providers are advised to consider the frequency, size and duration of sponsorship announcements made during a programme to ensure that the requirements of Rule 12(6) are met. Service providers are advised to approach any sponsorship announcements during a programme with the aim of ensuring no greater prominence than is necessary for the user to see or hear the announcement and acknowledge it.

The sponsorship announcement may be integrated with the programme's title sequence, provided it clearly identifies the sponsor and its relationship with the programme.

(10) Techniques which exploit the possibility of conveying a message subliminally or surreptitiously must not be used in a sponsorship announcement.

GUIDANCE:

Subliminal techniques will be regarded as those a viewer is unaware of when watching the programme or sponsorship announcement in real time.

Surreptitious techniques will be regarded as those by which a viewer may be aware that a message has been included, but is unaware that it has been done so for the purpose of advertising. Such techniques are likely to be considered intentional if they occur in return for payment or other valuable consideration.

(11) A sponsorship announcement must not—

- (a) prejudice respect for human dignity;
- (b) include or promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- (c) encourage behaviour prejudicial to health or safety;
- (d) encourage behaviour grossly prejudicial to the protection of the environment;
- (e) cause physical or moral detriment to persons under the age of eighteen;
- (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
- (g) exploit the trust of such persons in parents, teachers or others; or
- (h) unreasonably show such persons in dangerous situations.

GUIDANCE:

It is important to note that the Rules regarding sponsorship announcements apply to the whole of a sponsorship announcement, or other item or presentational technique used to identify that a programme or service has been sponsored and the identity of the sponsor. They do not apply to material (such as advertising) that may be included adjacent to the sponsorship announcement and which may be subject to different regulatory requirements.

Definition of 'sponsored programme' - section 368G(12) and (13)

A programme included in an on-demand programme service is “sponsored” if a person (“the sponsor”) other than:

- (a) the provider of that service, or
- (b) the producer of that programme,

has met some or all of the costs of the programme for the purpose of promoting the name, trademark, image, activities, services or products of the sponsor or of another person.

A programme is not sponsored if it falls within this definition only by virtue of the inclusion of product placement²³ or prop placement²⁴ (see Guidance on Rule 13).

Definition of sponsored on-demand programme service - section 368G(15) and (16)

An on-demand programme service is “sponsored” if a person (“the sponsor”) other than the provider of the service has met some or all of the costs of providing the service for the purpose of promoting the name, trademark, image, activities, services or products of the sponsor or another person.

A person is not to be taken to have met some or all of the costs of providing a service only because a programme included in the service is sponsored by that person.

Definition of a “sponsorship announcement” – section 368G(17)

A “sponsorship announcement” means:

- (a) anything included for the purpose of complying with the requirements to clearly inform users of the existence of a sponsorship agreement and to display at the beginning or end of a sponsored programme the name of the sponsor and the logo or other symbol (if any) of the sponsor ; and
- (b) anything included at the same time as or otherwise in conjunction with anything within paragraph (a).

GUIDANCE:

A person meets some or all of the costs of a programme included in a service only if that person makes a payment or provides other resources for the purpose of meeting or saving some or all of the costs of:

- (a) *producing that programme;*
- (b) *transmitting that programme; or*
- (c) *making that programme available as part of the service.*

²³ See section 368H(1) of the Act.

²⁴ See section 368H(2) of the Act.

Definition of “tobacco product” – section 1 of the Tobacco Advertising and Promotion Act 2002

“Tobacco product” means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed.

Rule 13: Prohibition of Product Placement and Exceptions²⁵

Note: Rule 13 applies only in relation to programmes the production of which began after 19 December 2009.

Prohibited Product Placement

Product placement is prohibited in children’s programmes included in on-demand programme services.

GUIDANCE:

The statutory definition of “Children’s programme” is set out at the end of this section. ATVOD regards this definition as extending to programmes acquired from overseas but excluding films which were originally made for cinema.

Where a children’s programme is included as a segment of a programme that may contain product placement, service providers should ensure that the children’s content is set clearly apart and demonstrably free from product placement.

Product placement is prohibited in on-demand programme services if—

- (a) it is of cigarettes or other tobacco products,
- (b) it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products, or
- (c) it is of prescription-only medicines.

GUIDANCE:

This includes non-tobacco products or services which share a brand name with a tobacco product which are prohibited by law from advertising in other UK media. The definition of a ‘tobacco product’ is set out at the end of this section.

Product placement of alcoholic drinks must not—

- (a) be aimed specifically at persons under the age of eighteen;

²⁵ Section 368H of the Act

- (b) encourage immoderate consumption of such drinks.

GUIDANCE:

Whether a placement is aimed specifically at persons under the age of eighteen will be judged not only on the content of the programme but also on the context in which the placement is presented.

“Encourage” and “immoderate” will be judged in the context of the programme itself, having regard to all the surrounding circumstances including any editorial justification and the programme narrative.

Permitted Product Placement

Subject to the above, product placement is otherwise permitted in programmes included in on-demand programme services provided that—

- (a) conditions A to F below are met, and
(b) where the programme featuring the product placement has been produced or commissioned by the Service Provider or any connected person, condition G is also met.

Conditions A to F

• **A:**

The programme in which the product, service or trademark, or the reference to it, is included is—

- a) a film made for cinema;
b) a film or series made for a television programme service or for an on-demand programme service;
c) a sports programme; or
d) a light entertainment programme.

GUIDANCE:

‘A film made for cinema’ is a film originally made for showing in the cinema.

‘Films and series made for audiovisual media services’ potentially includes a wide range of programming, both scripted and non-scripted. The sheer variety of programme concepts and formats therefore makes it impossible to provide definitive guidance about whether particular types of television films and programmes are excluded from the permitted genres for product placement. However, service providers should note the following:

‘Films’ includes films made for cinema and films (including single dramas and documentaries) made for television or other audiovisual media services (e.g. on-demand services).

'Series' comprises a group of programmes in which the editorial content is clearly linked. For example, a series encompassing a story, theme or narrative that develops across episodes, with the appearance of regular characters/presenters. In this context 'series' includes serials such as soaps.

'Sports programmes' may include both coverage of sports events and programmes about sport. However, a news programme which covers issues arising from sport will not be considered a 'sports programme'.

'Light entertainment programmes' like 'films and series', also refers to a very wide range of programming. Comedy, chat shows, comedy, music programming, factual entertainment, variety, quizzes, game shows, talent contests and 'reality' programmes may fall within this category.

Product placement is permitted in 'magazine' programmes that may contain news and/or children's content in as far as they can be regarded as belonging to any of the permitted categories of 'films', 'series', or 'light entertainment'. However, product placement is not permitted in those segments of such programmes which are news and/or children's programming.

Product placement is permitted in single programmes in all genres that can carry product placement.

- **B**

The product placement has not influenced the content of the programme in a way that affects the editorial independence of the provider of the service.

GUIDANCE:

Editorial control of the programme should never be ceded to any party seeking the placement of the product via the product placement agreement. Service providers must retain ultimate control over the content of the programmes they offer and also the organisation of programmes in their service.

Service providers should not enter into commercial arrangements that impair or appear to undermine editorial judgements. This does not prevent legitimate instances of product placement: product placement arrangements will necessarily involve contractual agreements relating to references to products, services or trade marks in programmes. Service providers or programme-makers may wish to enter into agreements about the manner in which a placed product will appear in a programme (e.g. whether it will be used by a particular character, in what scenes it will be used etc.). Likewise, the Rules do not set restrictions on what point during the production process product placement arrangements are agreed. ATVOD acknowledges that, in some circumstances, it may be appropriate to determine product placement arrangements alongside the creation of the editorial content itself.

While such practices are acceptable in principle, service providers should take care to ensure that product placement arrangements do not take precedence over a programme's editorial needs. There must be sufficient editorial justification for references to placed

products, services and trade marks. In this respect, Conditions C (no promotion) and D (no undue prominence) are two key protections to ensure that editorial content is not distorted for the purpose of featuring placed products, services or trade marks.

Service providers should be able to demonstrate that neither they nor a programme producer (or a connected person) have provided guarantees relating to placed products etc that could result in, or amount to, the service provider relinquishing its editorial control. Service Providers should retain discretion to choose the exact timing and/or positioning of a product or brand on-screen and must retain final control over editorial decisions. In particular, service providers must retain the right to amend, remove or obscure product placement references if they judge that these do not comply with the Rules.

- **C**

The product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.

GUIDANCE:

Where a product, service or trade mark is included in a programme as a result of a product placement arrangement, a positive reference to it, whether in vision or audio, is likely to be perceived to be promotional in intent.

Factors that are likely to be considered promotional include, but are not limited to, the following:

- encouragements to purchase (whether direct or indirect);
- advertising claims;
- price or availability information;
- references (either explicit or implicit) to the positive attributes or benefits of the placed product, service or trade mark;
- slogans associated with the placed product, service or trade mark; and/or
- endorsements (either explicit or implicit).

A breach of this Rule is likely to occur where a clear promotional statement about a placed product is made (e.g. a comment about the superlative nature of a product) or where repeated implicit promotional content is included (e.g. multiple references to a product that cannot be justified by the editorial requirements of the programme).

Implicit promotions are likely to arise, for example, when a character is, or a range of characters are, shown repeatedly using the same placed product. However, each case will be judged on its individual merits: there are some situations in which there is likely to be stronger editorial justification for showing a character repeatedly using the same placed product, e.g. a character in a soap or a drama series owning a particular make of car.

The use of a placed product by a programme presenter or a character will not, in itself, necessarily be treated as endorsement. However, this may depend on, for example, the individual in question and the manner in which they use or refer to the placement. The potential for promotion in verbal references to placements by presenters or characters will require careful consideration. Another important consideration may be any commercial

arrangement the individual has with the placed brand (for example, where a presenter is contracted by a brand to be its ambassador, product placement involving the individual using that brand in a programme may be viewed as promotional, particularly if the placement coincides with an advertising campaign for the brand that features the individual).

Whilst product placement is not prohibited in consumer advice programmes, a positive review of a product that has been placed within the programme could be seen as promotional for the product, and therefore in contravention of this Condition.

Product placement and competition prizes (including sponsor's products as prizes):

The donation of a competition prize is likely to be treated as prop placement provided the Service Provider or producer receives no benefit beyond the value of the prize itself for featuring the prize in a programme. If the service provider, programme-maker or a connected person receives payment or other valuable consideration in return for including prizes in a programme, this is likely to be treated as product placement. Given the manner in which prizes are generally described to enable the audience to decide to enter a competition, the product placement of competition prizes is unlikely to comply with this Rule. In cases where a sponsor donates a prize to be given away in the programme it is sponsoring, any donation that forms part of the sponsorship agreement is likely to be treated as product placement (see also Rule 12(6)).

• **D**

The programme does not give undue prominence to the products, services or trademarks concerned.

GUIDANCE:

In assessing whether a programme has given undue prominence to a product or service included as a result of product placement, the term "due" is important.

Editorial justification is one of the fundamental tests by which undue prominence will be assessed. In particular, storylines, themes and narratives that appear to have been constructed for the purpose of giving exposure to or featuring placed products, services or trade marks, with a lack or absence of sufficient editorial justification will be more difficult to justify as duly prominent. However, where a storyline or theme fits comfortably with the programme's understood character, issues of undue prominence (and also promotion and editorial independence) may be less likely to arise.

Examples of format or storyline construction that are likely to lead to issues of undue prominence may include:

- *a reality format in which participants are required to perform tasks or challenges that feature strongly or frequently a placed product, service or trade mark; or*
- *improbable or contrived character or plot development, presenter behaviour, location, setting or other structural elements of a programme resulting from or linking to a product placement.*

Service providers will need to exercise particular care to ensure that there is clear and sufficient editorial justification when a placed product is integral to the storyline/theme of a new programme or format. In such cases, consistency with an established programme format or profile will be more difficult, or impossible, to demonstrate.

Generally, service providers should always bear in mind that the placing of products or services should be defensible editorially. The extent and nature of the exposure always needs to be considered against the editorial requirements of the programme.

In this respect, questions service providers and producers should consider include:

- *is the placement easily accommodated editorially, or do significant changes have to be made to integrate the placement?*
- *similarly, would viewers be likely to perceive the placement as natural and in keeping with the programme's style and content?*
- *does any repetition of reference to the product, in vision or sound or both, suggest that the placement is guiding or distorting editorial content?*

Judging how much placement can be supported by a programme will be a matter for the service provider in the first instance; as the number of references to a placed product increases, or indeed the number of placements in any one programme overall, so should the service provider's caution.

- **E**

The product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.

GUIDANCE:

Subliminal techniques will be regarded as those a viewer is unaware of when watching the programme or sponsorship announcement in real time.

Surreptitious techniques will be regarded as including those by which a viewer may be aware that a message has been included, but is unaware that it has been done so for the purpose of advertising. Such techniques are likely to be considered intentional if they occur in return for payment or other valuable consideration.

- **F**

The way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not—

- (a) prejudice respect for human dignity;
- (b) promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- (c) encourage behaviour prejudicial to health or safety;
- (d) encourage behaviour grossly prejudicial to the protection of the environment;
- (e) cause harm to persons under the age of eighteen;

- (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
- (g) exploit the trust of such persons in parents, teachers or others; or
- (h) unreasonably show such persons in dangerous situations.

- **G**

The on-demand programme service in question signals appropriately the fact that product placement is contained in a programme, no less frequently than—

- (a) at the start and end of such a programme, and
- (b) in the case of an on-demand programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.

Condition G applies only where the programme featuring the product placement has been produced or commissioned by the provider of the service or any connected person.

GUIDANCE:

Product placement could be indicated by a logo or script appearing on the screen, or by a spoken announcement, or in other ways. These (and other) alternatives are not mutually exclusive – there could for example be both a logo and a spoken announcement.

Service providers are free to decide how much screen space an announcement about product placement should take up, and how long it should stay on screen, subject to it complying with Conditions C (no promotion), D (no undue prominence), and E (no subliminal or surreptitious techniques).

Service providers may wish to follow Ofcom's Technical Criteria for Universal Product Placement Logo²⁶ when deciding how to indicate to viewers that product placement is contained, although there is no requirement to do so in respect of on-demand services. Alternatively, a script or announcement could refer simply to the fact that the programme contains product placement (for example, 'This programme contains product placement') or it could say something about what was placed (for example, 'This programme contains product placement of Product X') or who placed it ('This programme contains product placement by the Advertiser Y') subject to it complying with Conditions C, D, and E.

It is also possible for a logo to appear on screen at the point in the programme where a placed product appears provided, again, that Conditions C, D, and E are complied with and provided that the signal also complies with this requirement.

²⁶ See Annex 1 of [Ofcom Guidance Notes Section Nine: Commercial references in television programming](#).

Definition of “Prop placement”²⁷

“Prop placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where:

- (a) the provision of the product, service or trade mark has no significant value; and
- (b) no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trademark, or a reference to it, in the programme.

Definition of “Children’s programme”²⁸

“Children’s programme” means a programme made:

- (a) for a television programme service or for an on-demand programme service, and
- (b) for viewing primarily by persons under the age of sixteen

Definition of “tobacco product” – section 1 of the Tobacco Advertising and Promotion Act 2002

“Tobacco product” means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed.

Other Definitions for Rule 13

“Film made for cinema” means:

a film made with a view to its being shown to the general public first in a cinema.

“Relevant provider”, in relation to a programme, means:

- (a) the provider of the on-demand programme service in which the programme is included; and
- (b) the producer of the programme.

²⁷ Section 368H(2) of the Act.

²⁸ Section 368R(1) of the Act.

“Residual value” means:

any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trademark, or a reference to it, in a programme.

“Significant value” means:

a residual value that is more than trivial.

“Trade mark”, in relation to a business, includes:

any image (such as a logo) or sound commonly associated with that business or its products or services.

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