

News International Limited

Response to Ofcom Consultation - Procedures for handling appeals on scope and for imposing sanctions in relation to On-Demand Programme Services

News International Limited (“**NI**”) welcomes the opportunity to respond to this consultation on behalf of its subsidiaries Times Newspapers Limited and News Group Newspapers Limited.

NI’s main concerns relate to the proposals set out in paragraphs 3.8 and 3.14 of the Consultation document. In particular, NI is concerned that the period of ten working days (or less if so directed by Ofcom under paragraph 3.9) in which to submit an appeal to Ofcom in respect of any ATVOD decision may not allow an appellant sufficient time to prepare its appeal. In particular:

- NI suggests that time to present an appeal to Ofcom should not start to run until the appellant receives notice of ATVOD’s decision. If time were to run from the date of the decision, as Ofcom proposes, the time available to the appellant would be reduced by an arbitrary amount which would be unfair and inappropriate. NI suggests that the point from which time is to run should be the time or date on which notice of the decision and ATVOD’s reasons for it is served on the person to whom it is addressed and that Ofcom should make clear what amounts to good service for this purpose.
- A person whom ATVOD determines to be providing an On-Demand Programme Service may need time to consider the case against him and to obtain legal advice if necessary, especially if the reasons given are the first occasion on which they have been fully formulated, which is quite likely since they will no doubt take account of the appellant’s earlier representations. Not to give the appellant adequate time to consider the case against it, possibly with Counsel, would be unjust and it is not clear that ten working days would always be sufficient.
- An appellant would also need adequate time to prepare its case on appeal. It appears from paragraph 3.8 that not only must an appellant set out the grounds of appeal and a detailed explanation of each specific ground but it must also include, in writing, all the evidence that it wishes Ofcom to take into account. It seems that this would exclude evidence in video form, so written descriptions of any relevant video material would have to be prepared. To fit that task, be it in the form of a witness statement or otherwise, into the ten working day timetable could be challenging. The interests of justice and efficient regulation are unlikely to be served by such a short timetable. These concerns apply equally to an appellant’s obligation to adduce further information if requested to do so by Ofcom under paragraph 3.14.

NI therefore suggests that longer periods should be allowed than ten working days, that appellants should have liberty to apply for more time in appropriate cases, that video material should be capable of being adduced and that Ofcom should clarify what form the other evidence should take.