

Future regulation of on-demand programme services

Response from the Commercial Broadcasters Association to Ofcom

March 2016



A VOICE FOR COMMERCIAL BROADCASTERS IN THE UK

Introduction

1. The Commercial Broadcasters Association (COBA) is the industry body for multichannel broadcasters in the digital, cable and satellite television sector and on-demand services.
2. COBA members are critical to the global success of the UK broadcasting sector and its “mixed ecology” of public and private investors. As arguably the fastest growing part of the UK television industry, they are increasing their investment in jobs, content and infrastructure:
 - **Scale:** In the last decade, the sector has increased its turnover by 30% to more than £5 billion a year. This is rapidly approaching half of the UK broadcasting sector’s total annual turnover, and has helped establish the UK as a leading global television hub.¹
 - **Employment:** As part of this growth, the multichannel sector has doubled direct employment over the last decade.²
 - **UK production:** In addition, the sector has increased investment in UK television content to a record £725m per annum, up nearly 50% on 2009 levels.³ Ofcom’s 2014 review of public service broadcasting found that new commissions by the sector were up 43% since 1998 and were the only source of growth in investment in UK television production over this period.⁴
3. For further information please contact Anna Missouri, COBA’s Policy and Communications Executive, at anamaria@coba.org.uk or 0203 327 4054

¹ Ofcom International Broadcasting Market Report 2013

² Skillset, Television Sector – Labour Market Intelligence Profile

³ COBA 2014 Census, Oliver & Ohlbaum Associates for COBA

⁴ Public Service Content in a Connected Society, Ofcom’s Third Review of Public Service Broadcasting, December 2014

Response to consultation

Question 1: Do you agree with Ofcom's proposal substantively to align procedures for investigating breaches of rules for ODPS with established procedures for linear television broadcasting, and do you have any specific comments on any aspect of the draft Procedures at Annex 5?

1.1 We agree with the proposal.

Question 2: Do you agree with Ofcom's proposal not to charge fees under section 368NA of the Act, and specifically to cover the small incremental cost involved in becoming sole regulator (rather than co-regulator) of ODPS within the existing fees structure for television broadcasting licensees? If not, which alternative option do you consider would provide a proportionate, fair and pragmatic basis for apportioning these costs?

2.1 Given the timeframe, we support Option A, not to charge for 2016-17. However, this should not be seen as a longterm solution since not charging notified services potentially places an unfair burden on existing Ofcom broadcast licence holders, who may be effectively subsidising regulatory costs for those on-demand services who are not existing broadcast licence holders. That said, we appreciate there may be challenges in collecting fees from some notified services that make it impractical to do so. We ask Ofcom to consult further on options for fee payments for the next financial year in due course.

2.2 As part of its thinking on this matter, Ofcom might consider fee levels for notified services in other EU Member States. We would welcome clarification on whether other regulators charge notified services, particularly those that are already paying fees for broadcast licences, as it is important to ensure that the UK does not stand out as an expensive place to base a service. Fees might, for example, be charged only to those service providers who do not already contribute to the cost of regulation via a broadcast licence. We ask Ofcom to take this point into consideration in any future consultation on fee payments.

2.3 In terms of the other options for 2016-17, COBA has taken part in various ATVOD fees working groups, which have explored a range of potential options for calculating fees. It has repeatedly proved difficult to isolate revenues specifically for on-demand services, as opposed to their corporate groups. We

therefore see Option B, which sets out to specifically capture ODPS revenues, as problematic.

- 2.4 We are also firmly opposed to Option C, charging larger providers only. Such a weighted increase does not in our view represent fair and proportionate regulation. As we made clear to ATVOD when it proposed a rise in fees weighted to larger providers last year, such a disproportionate increase does not reflect in any way the workload for the regulatory body, which in this case seems weighted towards smaller, adult services. Larger VoD providers are not necessarily benefiting from a greater increase in profits than smaller services, and there have been several high profile closures amongst larger services recently. These closures have not all been as a result of consolidation, and testify to the ongoing commercial challenges facing VoD services.
- 2.5 We therefore question whether a proposal for a differential increase complies with Ofcom's Charging Principles. These require fairness, including raising funding "in a manner that is equitable", and cost-reflectiveness, which calls for charges to reflect the underlying cost "of regulating each category of stakeholder".⁵ The latter point we believe is particularly relevant given the potentially high level of costs that ATVOD historically incurred regulating adult services.

⁵ Consultation on regulatory fees for on-demand programme services for the period 1 April 2015 to 31 March 2016, ATVOD, page 11