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By post and email

I am writing to respond to your review of the designation of the Advertising Standards Authority (ASA) as the co-regulator of advertising included in notifiable on-demand programme services (ODPS).

We believe the co-regulation of advertising in ODPS has been successful and that we have performed our duties to a consistently high standard. We are confident that we can continue to deliver these high standards of regulation for the remainder of the designation term and are keen for the current arrangement to continue. This letter will therefore set out our case for retaining the current co-regulatory arrangement, with one request for an amendment to the designation agreement.

The ASA is celebrating its 50th anniversary this year and we believe that now, more than ever, there are clear benefits to consumers, business and society in retaining a single advertising regulator. The ASA continues to offer a single, easy-to-access complaints service for consumers. The ASA has readily adapted to recent technological developments and increasing media convergence, offering businesses the assurance of clear and consistent regulation.

In the ODPS sector, it is notable that the majority of complaints we receive are addressed by the self-regulatory rules in the UK Code of Non-broadcast Advertising, Direct Marketing and Sales Promotion (the CAP Code), particularly the rules on misleading or offensive advertising, with very few complainants raising concerns that fall under the co-regulatory rules in Appendix 2. We believe advertising in ODPS is most effectively regulated by a one-stop-shop that can apply both the statutory standards and the self-regulatory rules, as appropriate, providing consumers, advertisers and media owners with a single, comprehensive and consistent advertising regulator.

1. Criteria for designation as a co-regulator



Legal, decent, honest and truthful

Chairman Rt Hon Lord Smith of Finsbury Chief Executive Guy Parker
ASA Council (Non-broadcast) Louisa Bolch, Alan Bookbinder, Sally Cartwright, Rachel Childs, Roisin Donnelly, David Harker,
John Mayhead, Andrew Motion, Martin Narey, Hamish Pringle, Ruth Sawtell and Anthony Wilkes

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We believe the ASA continues to meet Ofcom's tests and the statutory criteria for designation as a co-regulator, as set out in Annex 2 of your letter of 6 August and in the September 2009 consultation.

1.1 Ofcom's tests for co-regulation

1.1.1 Public awareness

The ASA is widely recognised as the regulator for advertising in all media. Our regular attitudes and awareness research consistently shows that the ASA is the most frequently spontaneously mentioned organisation when respondents are asked to name the UK's advertising regulator. We receive over 30,000 complaints a year (about advertising in all media).

We co-operate with other regulators to ensure that complaints are dealt with by the most appropriate body and have participated in the ParentPort initiative, to encourage parents to submit complaints if they have concerns about advertising. During the period under review, the ASA undertook national advertising to raise awareness of the extension of ASA regulation to marketing on marketer-owned websites. This advertising campaign raised public awareness of the ASA more generally, as well as increasing the number of complaints about internet marketing. We saw complaint and case levels rise dramatically immediately following the advertising campaign and the launch of the remit extension; case levels have now stabilised at 56% above the (pre-remit-extension) 2010 levels, with an increase in broadcast cases responsible for some of that increase.

1.1.2 Transparency

The ASA follows clear procedures, which are published on our websiteⁱ and attached to this letter as Attachment 1. We publish detailed reports on the outcome of all formal investigations and publish more basic information about complaints that have been resolved informally.

1.1.3 Significant participation by industry

Industry participates in the ASA/CAP system through CAP, which includes members representing advertisers, agencies and media owners. The system is funded by a voluntary levy on advertising expenditure. The advertising industry actively engages with ASA/CAP by, for example, requesting guidance on how the Codes apply to new advertising formats and techniques.

CAP actively seeks to update its membership to ensure that those who are subject to the Code are represented. Since designation, the ATVOD Industry Forum has joined CAP. Although CAP does not perform a designated function, the ATVOD Industry Forum's participation raises awareness amongst notified service providers of the ASA/CAP system and provides a clear channel of communication to bring advertising regulatory matters to the attention of notified service providers and allow service providers to bring any concerns they might have about how to comply with the rules to the attention of CAP.

As mentioned in 2.1 below, service providers have requested guidance from CAP on the regulatory status of non-audio-visual advertisements that they carry and have indicated that they intend to request guidance on the standards that apply to content that may be accessed from interactive advertisements included in notified on-demand services.

1.1.4 Adequate resource commitments

In light of our experience in the two-year period under review, we are confident that we have adequate staff and systems in place to perform the designated function. I attach a letter from Asbof (Attachment 2) which funds the ASA, confirming that it will make adequate funds available for the ASA to continue to perform the designated function for the duration of the designation.

1.1.5 Enforcement measures

The ASA has a range of sanctions available to it. In the first instance, publication of an adjudication is usually sufficient to ensure compliance. If advertisers refuse to comply with an ASA adjudication, CAP can issue an Ad Alert to media owners, asking them to refuse further advertising from the advertiser. The designation agreement allows the ASA to refer an ODPS to Ofcom for enforcement action, in accordance with paragraph 7(xi). We have not experienced any difficulties in achieving compliance with the statutory standards.

1.1.6 Clarity of processes and structures

The ASA has well-established processes and structures. Code-writing, the provision of advice and guidance, monitoring and compliance action (including the application of sanctions) are performed by the industry-led body CAP, whereas the assessment of complaints and adjudications are performed by the independent ASA. CAP and ASA can seek advice from specialist panels, the Sales Promotion and Direct Response Panel and the General Media Panel, which are made up of experienced advertising practitioners. The Panels have no regulatory powers and are simply advisory bodies.

We publish information for consumers and industry, explaining our processes, as explained at 2.2 below. We also operate an Independent Review procedureⁱⁱ (see Attachment 3). The Independent Reviewer can advise the ASA Council to reconsider their adjudications if he believes there was a substantial flaw in an investigation, including a failure to follow established procedures.

Our website gives general information for consumers and industry about the structure of ASA, including information about self- and co-regulation, our remit, and our links with advertising regulators in other countries and with UK regulators of other sectorsⁱⁱⁱ.

1.1.6 Audit of members and schemes

The ASA does not operate on a membership basis; compliance with the Code is mandatory. CAP undertakes regular monitoring to pick up breaches of the Code that may not have been brought to the ASA's attention by complainants.

CAP also carries out sector compliance work if it becomes apparent that poor advertising practice is prevalent throughout a product sector. For example, CAP has recently undertaken sector compliance for the hotel sector, because many hotels were advertising VAT-exclusive prices on consumer-facing websites, in breach of the Codes. CAP will also write to all advertisers in a sector to inform them of a significant adjudication: for example, CAP recently wrote to all telecoms advertisers to advise them that a recent adjudication had established a new approach to the advertising of prices for broadband or media services that require the consumer to take line rental from the advertiser. Sector compliance work may be specific to a certain advertising medium but is usually media-neutral. To date, we have not carried out monitoring or compliance work specific to advertising included in notified ODPSs, but such advertising has been affected by the compliance projects such as those mentioned above. This helps bring about, where appropriate, consistency of regulation, and meets the expectations and needs of consumers and industry.

1.1.7 System of redress in place

The ASA does not seek financial redress for breaches of the Codes.

1.1.8 Involvement of independent members

The majority (eight out of twelve) of the non-broadcast ASA Council members are independent of the advertising and media industries. There are well-established procedures to avoid conflicts of interest: the ASA maintains a register of members' interests and Council members do not participate in discussions if they have an interest in the outcome. The Chairman of the ASA Council and Independent Council Members are appointed following public advertisement and in line with Nolan principles. They are required to be free from prior interests in the advertising industry.

1.1.9 Regular review of objectives and aims

The ASA's overall purpose is clear and remains unchanged: to ensure that advertising is legal, decent, honest and truthful for the benefit of consumers, business and society. The organisation's vision and strategy is set on a three-year basis, but is reviewed annually. Objectives and aims are reviewed and set on an annual basis. Performance against organisational objectives is assessed throughout the year, but is publicly reported on a half yearly basis, in our Annual Statement each October and our Annual Report each May. We publish our progress against our key performance indicators on a quarterly basis.

1.1.10 Non-collusive behaviour

The ASA does not engage in collusive behaviour. Both CAP and ASA have procedures to ensure that members who have an interest in the outcome of a decision do not have undue influence. Any ASA Council member who may be conflicted on the consideration of a case must withdraw from the discussion of a case. Although this can affect any Council Member, this is particularly important for those from the industry. Members may be asked to refrain from participating in discussion or voting or, if they have a direct interest in the outcome, may be asked to leave the room whilst the matter is discussed.

The ASA has clear policies covering the acceptance of hospitality and gifts and managing conflicts of interest and lobbying to ensure that it operates independently and without unfair influence.

The formal separation of CAP and ASA functions ensures that industry representatives who sit on or contribute to CAP cannot improperly influence ASA action.

1.2 Statutory criteria for co-regulation

1.2.1 [368B(9) (a)] fit and proper:

Since Ofcom found, in its Statement of 18 December 2009, that the ASA was a fit a proper body to be designated as a co-regulator, we have made no changes that, in our view, would adversely affect Ofcom's assessment.

1.2.2 [368B(9) (b)] consent:

I confirm that the ASA consents to designation.

1.2.3 [368B(9) (c)] financial resources:

I attach (Attachment 2) a letter from ASBOF, the body that funds the ASA, confirming that it will continue to make adequate funds available to the ASA to finance the effective performance of the designated functions.

1.2.4 [368B(9) (d)] independent of providers of on-demand programme services:

No current ASA Council member is affiliated with a notified ODPS provider.

The ASA Council consists of twelve members, eight of whom are Independent Members, independent of the advertising industry, and four of whom are Advertising Members, having professional experience with advertisers, agencies or media owners, and an independent Chairman. It would be possible for a member with an affiliation to a notified ODPS provider to sit as one of the four Advertising Members. There will always be a 2:1 ratio of

Independent to Advertising Members and the Council has well-established procedures for avoiding conflicts of interest.

1.2.5 [368B(9)(e)] will, in performing any function to which the designation relates, have regard in all cases

- (i) to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed
- (ii) to such of the matters mentioned in section 3(4) as appear to the body to be relevant in the circumstances

The ASA commits to being transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed in all aspects of its work, not only the co-regulation of advertising in notifiable on-demand programme services. Please see our response at 2.2 below for more information.

We also have regard to the matters mentioned in section 3(4) of the Communications Act 2003 (as amended) in our approach to co-regulation of broadcast and VOD advertising. In particular, we are mindful of the need to carry out our regulatory functions in the manner that best guarantees an appropriate level of freedom of expression and have regard to the vulnerability of children and others whose circumstances put them in need of special protection.

2. Performance of designated functions and compliance with the obligations and conditions set out in paragraphs 5 and 7 of the Designation.

2.1 Paragraph 5

In accordance with section 368C(1) of the Communications Act 2003, to take such steps as appear to the ASA to be best calculated to secure that the relevant requirements of the Act are complied with by Service Providers

2.1.1 Policy

The relevant requirements of the Communications Act have been incorporated into the CAP Code, as Appendix 2 to the Code. The CAP Code is the primary source of information about non-broadcast advertising standards for advertising practitioners (advertisers, agencies and media owners).

The ASA is widely recognised by consumers as the body that can take action on complaints about advertising, in any medium. Since designation, the ASA has (separately)

extended its remit to include a wider range of online marketing and supported the remit extension with national advertising campaigns targeting consumers and businesses.

ASA and ATVOD have co-operated to ensure that notified ODPS are aware of their responsibilities. ASA and ATVOD have included information on their websites setting out their respective remits and linking to the other's website. ATVOD's guidance on Rule 9 of the ATVOD Code (Supply of Information) advises ODPS providers to give the name, address and electronic address of the ASA as the regulatory authority for advertising.

CAP has engaged with the ATVOD Industry Forum to promote understanding amongst notified ODPS providers of the advertising requirements of the Communications Act. CAP is an associate member of the ATVOD Industry Forum and the ATVOD Industry Forum is a member of CAP. This has created a channel of communication between CAP and ODPS providers, particularly important amongst those ODPS providers who are not broadcasters and did not have previous experience of the ASA system.

CAP has developed and published guidance for advertisers and ODPSs on the scope of Appendix 2, addressing uncertainty amongst practitioners about the status of non-audio-visual advertisements. In the next 12 months, CAP expects to develop guidance on the extent of ODPS providers' responsibility for interactive content accessible through advertising included in their ODPSs.

2.1.2 Complaints handling

We were already handling complaints about VOD advertising at the time of designation and the number of complaints received has increased over the last two years, in line with increasing consumer engagement with VOD services and an increase in the amount of advertising carried on VOD services.

The ASA has not recorded any breaches of rules in Appendix 2. That reflects high levels of compliance in advertising on notified services, rather than a lack of regulatory activity. The majority of the advertisements about which complaints have been received are pre- or mid-roll audiovisual advertisements that previously or simultaneously appeared as broadcast advertisements. Because the statutory standards also apply to television advertising and are incorporated into the (more restrictive) BCAP rules for television advertising, ads that have been approved by Clearcast or by broadcasters for appearance on television are likely to comply with the Appendix rules. Clearcast offers guidance on the Appendix rules as well as the BCAP rules, including guidance on placement of video-on-demand advertisements to ensure the protection of minors. Although many notified ODPS providers are not Clearcast users, the advertisers have often been made aware of regulatory requirements by Clearcast and taken appropriate action before placing advertisements.

The great majority of the complaints received about advertising in video-on-demand services fell outside the scope of Appendix 2, either because the VOD provider was not a

notified ODPS or because the complaint was not addressed by the statutory standards. Most complaints about advertising included in notified ODPSs concerned allegedly misleading or offensive advertising and could not be assessed under Appendix 2.

Over the two year period since designation, the ASA has received complaints about two advertisements that fell under Appendix 2 rules:

An advertisement for a sink waste disposal unit showed a user guiding waste into the disposal unit with her hands. The complainants believed this was unsafe, and could result in injury if emulated. The complaints suggested a potential breach of rule 30.6 (Advertising must not encourage behaviour prejudicial to health or safety). The ASA investigated and found that the ad depicted the recommended and safe usage of the unit; the complainants were misinformed about the risks of using the product as shown. The complaints were not upheld.

An advertisement for Red Bull involved cartoon penguins, depicted as parent and child. The child penguin suggested to its father that they should drink Red Bull, because it would “give them wings” and allow them to fly somewhere warmer. Complainants objected that Red Bull, which contains caffeine and taurine, is not suitable for children: some objected to the content of the ad and one complainant who saw the ad whilst watching a children’s programme on a notified ODPS objected that the advertisement should not appear around children’s programmes. The complaints might, arguably, have been considered under rules 30.10 (Advertising must not cause physical ... detriment to persons under the age of eighteen) or 30.11 (if advertising contains material which might seriously impair the physical ... 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). In fact they were considered under the non-statutory rules 1.3 (Marketing communications must be prepared with a sense of responsibility to consumers and society) and 15.11 (Marketing communications must not condone or encourage poor nutritional habits or an unhealthy lifestyle in children). The ASA decided, however, that the advertisement did not imply the drink was suitable for children.

The ASA has found breaches of CAP rules that fall outside the scope of Appendix 2 for advertising carried on notified ODPS. It found that an advertisement for Colgate Total toothpaste misleadingly implied the advertised product was endorsed by healthcare professionals and that an ad for a film that depicted dead bodies, one of which appeared to come back to life, was unsuitable for inclusion in the on-demand version of the X-Factor because it was likely to scare children. Outside the review period (after 31 July 2012), the ASA has found some aspects of a campaign that appeared on notified ODPS and included interactive elements was likely to cause serious or widespread offence.

The majority of complaints received about advertisements in video-on-demand services, both notified and unnotified, were not upheld: of 161 advertisements about which complaints were received, only three were found to breach the Code, although all were thoroughly assessment. We found no breaches of the statutory standards set out in Appendix 2.

2.2 Paragraph 7

In carrying out the Designated Functions and in exercising the Powers set out in Paragraph 6 above the ASA shall comply with the following Obligations and Conditions:

7(i) to ensure, in performing any function to which this Designation relates, that it takes all appropriate steps to comply with the statutory and regulatory duties and obligations that apply to Ofcom in performing its regulatory functions, including in particular:

7(i)(a) to have regard in all cases to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and to such of the matters in section 3(4) of the Act as appear to be relevant to it in the circumstances

The ASA has regard in all of its regulatory functions, not just those conferred by the designation, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. The ASA publishes its procedures and the outcome of all formal investigations. It operates an Independent Review procedure and is, of course, open to Judicial Review. It has recourse to a range of regulatory interventions: if an advertiser takes immediate action to address a mistake or unintended consequence, the ASA will usually consider the matter resolved without resorting to formal investigation; for straightforward problems that have not immediately been addressed by the advertiser, the ASA or CAP may ask for changes to be made to render an ad compliant; it is usually only those complaints that require the ASA to evaluate evidence, that raise serious concerns or that involve advertisers unwilling to make suggested changes that are dealt with through formal investigations.

The ASA also has a number of sanctions available to it. A formal adjudication is usually sufficient, but advertisers who refuse to comply with adjudications, for example, may be subject to Ad Alerts, which call on media owners to refer non-compliant ads to CAP's Copy Advice team and, for repeated or serious breaches, an ODPS provider can be referred to Ofcom for enforcement action. The ASA has regard to the need to be consistent in its regulatory decisions: staff and Council members routinely refer to previous cases and a number of internal processes exist to promote consistency, including internal and external guidance on established regulatory positions, management oversight and internal forums for case handlers. The ASA targets its interventions at cases in which action is needed. Most complaints to the ASA are rejected after the initial assessment of the complaint. Only those complaints that raise potential or clear breaches of the Code are pursued.

Of the matters referred to in section 3(4) of the Communications Act, we have particular regard to:

- *The vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection*
- *The needs of persons with disabilities, of the elderly and of those on low incomes*
- *The desirability of preventing crime and disorder*

- *The opinions of consumers in relevant markets and of members of the public generally*
- *The different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas*

We are mindful that our regulation of harmful or offensive material must guarantee an appropriate level of freedom of expression, in all media. We have recently invested in significant research to help us better understand the public's opinion about harmful or offensive advertising, across all media. Participants were invited to explore both consumer and citizen perspectives on harmful or offensive advertising.

7(i)(b) to consult and carry out impact assessments in relation to the carrying out of the Designated Function in circumstances where Ofcom would be required to do so to comply with section 7 of the Act

We have not introduced measures that would require an impact assessment. We have carried out the designated function by “copying out” the statutory standards for advertising in notified ODPS and have not introduced any measures that exceed the minimum required by law.

7(i)(c) to comply and secure that its staff comply with section 393 of the Act (confidentiality)

The ASA has not exercised any of the powers referred to in paragraph 393. The ASA has a general policy to obtain permission before disclosing information received in the course of carrying out its regulatory functions.

7(ii) following referral or appeal to Ofcom, to accept any decision of Ofcom on scope or as to whether is included in an on-demand programme service.

No specific cases have been referred to Ofcom or subject to appeal. The ASA has sought general guidance from Ofcom about scope; we accepted Ofcom's decision and reflected it in published guidance for the benefit of advertisers and ODPS providers.

7(iii) to require every Service Provider to secure that advertising included in the service they provide complies with the Rules.

The CAP Code makes clear that ODPS providers are responsible for ensuring that the advertising they carry complies with Appendix 2. The guidance on scope, published as a *Help Note on Advertising in Video-on-Demand Services*, elaborates on the extent of service providers' responsibilities.

7(iv) to ensure that the rules are expressed as the relevant requirements of the Act without material additions or omissions

Appendix 2 is a “copy out” of the relevant requirements of the Act and Ofcom has previously approved the text.

7(v) to consult with Ofcom in preparing interpretative guidance to the Rules (and any subsequent material changes to that guidance) and to obtain Ofcom’s prior written approval of such guidance before publishing it or any changes to it

As mentioned above, we have published one guidance document, the *Help Note on Advertising in Video-on-Demand Services*. Ofcom’s written approval was obtained before the Help Note was published.

7(vi) to ensure that in drawing up any guidance referred to in this Designation, such guidance reflects the following:

- (a) that it is provided as non-binding guidance only in order to aid interpretation of the Rules and*
- (b) that it will be the Rules themselves, rather than the guidance, which determine whether a contravention of the Rules has taken place*

The text of the Help Note, agreed with Ofcom, makes clear that it is guidance intended to help advertisers and ODPS providers to understand what action the ASA is likely to take, and that it is the rules and the Communications Act itself that determine whether advertising is permissible.

7(vii) to have in place and publish appropriate and robust complaints handling processes in order to carry out the Designated Functions, such processes to be formulated in consultation with Ofcom

Our procedures^{iv} are published on our website. The ASA publishes a guide for advertisers called *Complaint about your ad What happens now?*^v and a guide for consumers called *Your complaint – What happens now?*^{vi}. These procedures are common to advertising in all media.

7(viii) to handle complaints received by it in accordance with its obligations in this designation

We have handled all complaints about advertising included in notified ODPSs in line with the designation.

7(ix) to comply with the reporting obligations set out in the Schedule to this designation

7(x) to comply with the Key Performance Indicators (KPIs) set out in the Schedule to this Designation for its complaints handling arrangements.

We have submitted information about our performance against KPIs annually, as required by the Designation. I have also attached (Attachment 4) a summary that shows our performance against KPIs for all complaints received during the period under review (between 29 July 2010 and 31 July 2012).

7(xi) to inform Ofcom promptly of each case where the ASA is unable to secure compliance with the Rules, including where, in the opinion of the Chief Executive of the ASA, or such other official of the ASA as he or she may authorise, a Service Provider has:

(d) failed to comply fully and promptly with a decision of the ASA

(e) failed to co-operate fully and promptly with an ASA decision

(f) demonstrated a repeated disregard for the reasonable requests or decisions of the ASA or

(g) has committed one or more breaches of sufficient seriousness so as to warrant in the ASA's opinion investigation by Ofcom

7(xii) to refer to Ofcom immediately (together with copies of all the relevant evidence and submissions) all cases where the ASA considers that a service provider may have breached the Rules due to the inclusion in the service of material likely to encourage or to incite the commission of crime, or to lead to disorder, and where the contravention may be such as to justify the need for Ofcom to take urgent action under section 368L of the Act (suspension or restriction of service for inciting crime or disorder).

No such cases have arisen. We have worked with Ofcom to detail how the referral should be prepared and executed; the procedure is attached as Attachment 5. The ASA stands ready to refer any such cases to Ofcom, should the need arise.

7(xiii) to cooperate fully with Ofcom at all time, including:

(h) to consult Ofcom, as appropriate, in cases where there is any doubt in connection with any of the Designated Functions and/or the ASA's Powers, Obligations and Conditions under the Designation or any other provision of this Designation; and

(i) to supply Ofcom forthwith on request with any information it reasonably requires in connection with the carrying out of its functions

The ASA will cooperate fully with Ofcom should the need arise.

7(xiv) to consult Ofcom and ATVOD as appropriate in cases where there is doubt or disagreement as to whether a service constitutes an on-demand programme service for the purposes of section 368A(1) of the Act or, as appropriate, in connection with any of the ASA's Powers, Obligations and Conditions or any other provision of this Designation

The ASA routinely refers to ATVOD's published list of notified providers and ATVOD has promptly answered all queries from the ASA about the status of ODPSs, where there has been doubt. The ASA has not needed to consult Ofcom as yet, but will not hesitate to do so if ATVOD is unable to resolve queries.

7(xv) to notify Ofcom immediately if it has reason to believe it may no longer be able to carry out the Designated Functions for any reason and/or may no longer be able to satisfy the requirements of section 368B(9) to be the appropriate regulatory authority in relation to the Designated Functions and in each case to use its best endeavours to resolve any such issues promptly

We will notify Ofcom immediately of any such reason.

7(xvi) in the event that the ASA no longer wishes to be designated as the appropriate regulatory authority for the purpose of carrying out the Designated Functions and intends to withdraw its consent, it shall notify Ofcom in writing at least six months before ceasing to carry out the Designated Functions, setting out its reasons.

We have no intention of withdrawing our consent to the designation, but would ensure that we notified Ofcom accordingly in the unlikely event that we wished to do so.

3. Aspects of the Designation that may require amendment or opportunities for further enhancements of the current arrangements.

The ASA is able and willing to fulfil the designated function in line with the Designation agreement, in its current form, for the remainder of its term.

We note that, following its review of ATVOD's designation as co-regulator for editorial content on notified ODPSs, Ofcom has removed the requirement for ATVOD to obtain written approval from Ofcom before publishing guidance. We would welcome the removal of this requirement from the ASA Designation agreement. We have published one guidance document during the period under review, and the process of obtaining written approval from Ofcom, once the substance of the guidance had been agreed, took some six months. We believe the removal of this requirement will facilitate a more timely provision of guidance to advertisers and notified ODPS providers.

If this requirement is removed, we would continue to consult Ofcom on the correct interpretation of the requirements in the Communications Act and would seek to ensure that any guidance we published was consistent with Ofcom's current understanding of the statutory requirements. We would continue to make clear that guidance was provided only in order to aid interpretation of the CAP Code rules in light of the relevant requirements of the Act and that compliance with the CAP Code rules will not necessarily be taken by Ofcom to be compliance with the relevant requirements of the Act.

I hope this submission provides enough information for you to conclude that the ASA continues to satisfy the criteria for designation as a co-regulator. If you would like more information or supporting evidence from us, we would be very happy to supply it.

Yours sincerely

Chairman

ⁱ The non-broadcast complaint-handling procedures currently appear at <http://www.asa.org.uk/Complaints/-/media/Files/ASA/Misc/Non-Broadcast%20Complaint%20Handling%20Procedures.ashx>. We will be updating our websites on 13 September 2012, after which date this link will not work. The procedures will continue to feature on the new website, but I am unable to give you the URL at this time.

ⁱⁱ The Independent Review procedure currently appears at <http://www.asa.org.uk/Complaints/Independent-review-process.aspx>.

ⁱⁱⁱ We currently have a section called "Regulation Explained" at <http://www.asa.org.uk/Regulation-Explained.aspx>. Similar information will appear on the new website.

^{iv} See note (i) above

^v This currently appears at

http://www.asa.org.uk/Complaints/-/media/Files/ASA/Misc/ASA_Complaints_leaflet_FINAL.ashx

^{vi} This currently appears at

http://www.asa.org.uk/Complaints/-/media/Files/ASA/Misc/ASA8751_Your%20Complaint_v2.ashx