



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

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## BT's Response

We consider that the new procedures proposed in the consultation are, with a few exceptions discussed below, reasonable. We believe that they will help all parties understand what will happen should there be a disagreement with the Association for Television on Demand Limited (ATVOD) over the scope of On Demand Programme Services (ODPS) and how Ofcom will apply sanctions for a contravention of ODPS regulatory requirements.

BT has an internal process for ensuring compliance with the regulatory requirements imposed on it when it acts as an ODPS Provider under Part 4A (Section 368A onward) of the Communications Act 2003 (Act).

In particular, BT has notified (most recently on 29 April 2010) the ATVOD of its intention to be the ODPS Provider in respect of the BT Vision service, subject to the following exceptions where the editorial responsibility for the programming lies with a third party:

- The catch up/replay services of BBC, ITV, C4 and Five<sup>1</sup>
- Honda TV (provided by Honda UK)
- PictureBox (provided by Universal UK)

Accordingly, taking into account the generality of BT's notification of its intention to provide ODPS, we anticipate that BT is unlikely to be subject to appeals of ATVOD decisions in relation to what constitutes an ODPS.

With this in mind, we would like to make the following four comments:

- Firstly, BT considers that the procedure proposed for appeals to Ofcom on determinations made by ATVOD in terms of scope is broadly reasonable. However, BT believes that the proposed time-frame for making requests for appeal to Ofcom of 10 working days of the date of ATVOD's decision is too short (paragraph 3.8 of the Consultation Document). BT suggests that this time-frame should be extended to 30 working days, with discretion to Ofcom to extend it where appropriate depending on the nature and circumstances of the case. This would be in line with the general provisions of the Act.
- Secondly, BT considers that the proposed time-frame of 15 working days for an ODPS Provider to make written representations on a sanctions case (see paragraph 4.11 of the Consultation Document) is similarly too short. The suggestion (in footnote 45) that it may be appropriate to allow an ODPS Provider no more than 24 hours to make representations is even more unreasonable and impractical. BT suggests again that this time-frame should be extended to 30 working days, with discretion to Ofcom to extend it further where appropriate depending on the nature and circumstances of the case.
- Thirdly, BT considers that when Ofcom or ATVOD is concerned that an ODPS Provider has contravened a relevant requirement, and where the alleged contravention is minor, it should first notify the ODPS Provider of the alleged contravention and enter into informal dialogue with the ODPS Provider in an attempt to remedy the contravention and secure compliance prior to triggering the formal process (see paragraphs 4.7 onward).

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<sup>1</sup> The commercial arrangements with Five expired on 5 October 2010 and have not been renewed to date.

- Finally, more generally in relation to the proposed procedures relating to sanctions, BT would like to refer Ofcom to BT's comments in response to Ofcom's Consultation on Revising the Penalties Guidelines of the same date, which are also relevant to this Consultation.

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