

Channel 4 response to Ofcom review of the ASA's designation as the co-regulator of advertising in on-demand programme services

Channel 4 welcomes the opportunity to contribute to Ofcom's review of the designation of the Advertising Standards Authority ("ASA") as co-regulator of advertising in on-demand programme services ("ODPS").

For some years Channel 4 has been developing a range of on-demand services, both through its own on-demand service 4oD, available at channel4.com, on YouTube, on TV platforms Virgin Media, BT Vision and Talk Talk, and via a number of connected devices including PS3, Xbox, iPad and Flash-enabled smartphones and tablets.

4oD enables viewers to access a comprehensive catch-up on-demand service, making available the majority of Channel 4 programmes from across its digital channel portfolio, typically for 30 days after original linear transmission. In almost all cases the on-demand programmes are identical to those originally shown in linear TV form. Advertisements appear on the screen both prior to, and intermittently throughout, the programme itself. The 4oD service also offers access to Channel 4 archive programmes.

Channel 4 takes seriously its responsibility for transmitting suitable advertisements to viewers of its 4oD service. It has introduced a number of internal procedures to help guarantee that the appropriate advertisements are shown to the appropriate viewers, and ensures that all of its adverts on 4oD are cleared by Clearcast if they appear as a result of users selecting a 4oD programme.

Channel 4 has also put in place a system that ensures that adverts are appropriate for both the time of day and for the programme itself. Adverts that are not suitable for children, for example, will not be shown on any 4oD programmes before 9pm, regardless of the content of the programme or whether the programme has a guidance warning.

Channel 4 notes that the terms of the review are to:

- Ascertain whether Ofcom's tests for co-regulation are still being met, and that the ASA remains "an appropriate regulatory authority".
- Consider how the ASA is discharging its designated functions, obligations and conditions.
- Consider whether to continue the designation and, if so, whether to amend or enhance the current arrangements.

Channel 4 has consistently advocated the principle of co-regulation for the video-on-demand industry, and considers that co-regulation can provide the flexible and appropriate regulatory regime which this rapidly changing and expanding sector requires. Channel 4 has also consistently supported the ASA as the co-regulator of advertising in ODPS.

Channel 4 continues to support the designation of ASA as the co-regulator for advertising in ODPS in future, and the remainder of this submission addresses the terms of Ofcom's review in support of this position.

Ofcom's tests for co-regulation

Channel 4 believes that the ASA remains "an appropriate regulatory authority", as it continues to meet both the statutory criteria for co-regulation set out in section 368B(9) of the *Communications Act 2003* and Ofcom's good practice criteria for co-regulation.

In relation to the statutory criteria, Channel 4 believes that:

- The ASA has access to financial resources that are adequate to ensure the effective performance of its functions. Its financial model, whereby it receives a small voluntary levy on display advertising expenditure, airtime, paid-for search charges and some direct mail, has ensured that it has been sufficiently funded.
- The ASA is sufficiently independent of providers of ODPS, demonstrated by the structure of the ASA council where two-thirds of members are lay members and thus independent of industry.
- In carrying out its functions for regulating VOD advertising, the ASA has regard to the principles that regulatory activities should be transparent, accountable, proportionate and targeted only at cases in which action is needed.

In relation to Ofcom's tests for co-regulation, Channel 4 believes that the ASA continues to meet the criteria set out in Ofcom's *Principles for analysing co- and self-regulation* (2008). In particular:

- In carrying out its functions for regulating VOD advertising, the ASA is open and transparent in its operation, outlining all its adjudications on a weekly basis, clearly stating the complaint under discussion and the reasoning behind the ASA Council's decision. Its annual report reviews its annual performance, outlining the number of VOD advertisements subject to investigation in the year, which is followed by an annual statement that reports on performance in the first half of the year.
- The ASA's funding model ensures that the ASA is adequately funded without revealing to it the companies that are contributing to its income, thereby guaranteeing its independence. The ASA complements this income stream with additional funding from the provision of seminars and premium industry advice services.
- The ASA's enforcement measures – where it can either uphold a complaint in full or in part and thus order the removal of an advertisement – are, in Channel 4's view, strong enough for the ASA to administer an effective scheme.
- The Independent Reviewer of ASA Adjudications, Sir Haydn Phillips, oversees a strong, independent system of redress for ODPS, advertisers and complainants unsatisfied with the ASA's original ruling.
- The objectives and aims of the ASA were recently reviewed as part of a wide-ranging Process Review, where it has sought to ensure that it is more effective, efficient, cost-effective and in tune with stakeholders, especially in light of extended remits and covering different mediums.
- Finally, the ASA has taken active measures to ensure that the public are aware of its regulatory role and their own consumer rights, most recently through a television consumer campaign advertisement.

In addition, Ofcom also notes that, in the case of co-regulation, a clear division of responsibilities between the co-regulatory body and Ofcom is critical. Channel 4 believes that the respective powers and responsibilities of the ASA and Ofcom in regulating VOD advertising are clearly defined.

ASA's performance in discharging its designated functions, obligations and conditions

In Channel 4's view, the ASA discharges adequately its designated functions for regulating VOD advertising and is meeting the obligations and conditions set out in its designation from Ofcom.

Channel 4 is also satisfied that the obligations and conditions contained within the designation covers the necessary types of harm to ensure that the ASA has sufficient scope to protect viewers of VOD. It also welcomes Ofcom's continued commitment to ensuring that the ASA restricts its

regulatory focus on advertisements that appear as a result of users selecting a VOD *programme* rather than a VOD *service*.

Channel 4 notes that the current designation will, subject to approval in this consultation process, have effect until 2020, and further notes that Ofcom may vary this designation at any time provided that it provides the ASA with thirty days' notice. Channel 4 believes that this provides certainty to the ASA as well as flexibility to adapt to new technologies and the transition towards greater converged platforms.

Designation of the ASA in future

For the reasons set out above, Channel 4 believes that Ofcom should continue the designation of the ASA as the co-regulator of advertising in on-demand programme services for the foreseeable future.

Channel 4 hopes that this submission is of assistance, and would be happy to discuss any element of the submission if that would be of use to Ofcom.

September 2012