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Clearcast submission to Ofcom's review of the designation for the regulation of advertising in demand programming

Introduction

Clearcast

1. Clearcast provides pre-clearance of TV advertising to UK licensed broadcasters. Clearcast has performed the role, although under different names, since the introduction of commercial television in the UK.
2. We were part of ITV, offering clearance to subscribers, until January 2008, when we became an independent company, with ITV, Channel 4, Channel 5, BskyB, Turner Broadcasting and Daybreak as its current owners. All UK commercial broadcasters can use our services.
3. Clearcast has offered advice on TV-like VoD ads since the introduction of the AVMS Directive in December 2009.
4. The company is also responsible for Attribution, an advertising reporting mechanism, and CARIA, an on-line booking system for TV advertising.

The submission

5. Clearcast argues in this submission that the current arrangements for enforcing the rules on VoD advertising are generally working well.
6. We are of the view that the successful application of the advertising codes for broadcast and non-broadcast by the ASA over many years should be recognised by delegating the ASA the powers to provide guidance and enforce the code in an independent manner without the need to consult Ofcom.
7. We argue that awareness of the responsibility for compliance is sometimes less well-known in certain sectors of VoD publishing and that the industry should do more to raise awareness.





Response to the designation consultation

8. Clearcast will typically be involved in the creative process for TV-like VoD advertising at script stage, just as it is for TV advertising. We advise on any possible contraventions of the CAP Code and its VoD annex, before the advertisement is shot.
9. We similarly advise on any placement restrictions that should be applied to advertisements. The placement restrictions are specially devised for VoD advertising – ensuring that advertisements containing violence, harm, sex or nudity, are placed where they are suitable in the context of the programme. The restrictions include the level of violence, harm etc., ranging from mild to serious, allowing the restrictions to be applied in a similar fashion to how timing restrictions are used.
10. If a TV-like VoD advertisement is complained about, the ASA has access to Clearcast's online clearance system, Adway, to verify whether it is an advertisement for which advice has been provided by Clearcast.
11. If this is the case, an informal agreement ensures that Clearcast will be notified of the complaint. Clearcast may be invited to respond during the course of investigation, if the ASA considers Clearcast's opinion is important to the outcome of the investigation.
12. Clearcast is of the opinion that the current arrangements are working well and that there is clear evidence that the ASA is an effective enforcer of the advertising regulation for Video on Demand. We therefore suggest no changes to the body designated.
13. CAP and the ASA communicate the content and interpretation of the codes in a number of ways. With regard to interpretation of the codes, the adjudications are at the very centre of all communication, training and guidance that is offered. With regard to the latter, we understand that the ASA has the obligation to share its draft guidance with Ofcom and seek approval before publication for any guidance on Video on Demand.
14. With the CAP and the ASA's many years of experience of advertising regulation and its track record as an effective, transparent and recognised self- and co-regulator, we would argue that this should also be applied to VoD. Allowing CAP/ASA to issue its own guidance for VoD would help them to respond quickly and adequately to issues in advertising that it deems necessary to cover by guidance. We also believe this would be consistent with the current arrangements in place for ATVOD for editorial issues.



15. Clearcast would finally like to share a concern – namely the discrepancy in the perception of responsibility for advertising compliance between VoD publishers.
16. Clearcast typically works with broadcasters, but increasingly with VoD publishers without a broadcast background. Broadcasters who are fully familiar with the responsibility that falls on them in terms of advertising compliance, extend their TV compliance practice to VoD via Clearcast.
17. VoD publishers without this background often hold that the publishers' responsibility is only relevant for broadcasters that publish Video on Demand. This is in contrast to paragraph 7 (iii) in the Designation document, which states "to require every Service Provider to secure that advertising included in the service they provide complies with the Rules".
18. We do not argue that the ASA needs to better inform the VoD industry – it might be a case for a wider industry effort to increase awareness of responsibilities within the sector, something which Clearcast is and will continue to be a part of.