



Virgin Media's response to the joint consultation by Ofcom and ATVOD on the proposals for setting of regulatory fees for the video on demand services for the period up to 31 March 2011 ("the Consultation")

Virgin Media welcomes the opportunity to respond to the Consultation covering the setting of regulatory fees to be paid by providers of on-demand programme services ("**ODPS**").

By way of background, Virgin Media has been a key contributor to the development of co- and self-regulatory systems in the UK and has knowledge of how fees are set for other similar bodies. It was a founder member of the Internet Watch Foundation. It played a role in the setting up of the BCAP co-regulatory system for broadcast advertising and is a member of the BCAP board. Virgin Media is also a founder member of the Association for Television On-Demand ("**ATVOD**"), the now co-regulatory body for VOD editorial content. Virgin Media has also been an active participant in the Video Editorial Steering Group ("**the VESG**").

We understand that ATVOD will need to consult fully on the fee structure from March 2011 onwards. Virgin Media has therefore limited its comments in this Consultation to those points which are particularly relevant to the setting of fees for the period up to 31 March 2011.

By way of an overview of Virgin Media's position, we agree with Ofcom and ATVOD's suggested approach that the fee for the period up to 31 March 2011 should be set at a flat-rate of £2,500 per ODPS. Likewise and given the nascent state of the VOD market, Virgin Media also considers that it is unlikely that any fee system, other than a flat-fee structure, will be practical for the foreseeable future. Virgin Media sets out its reasoning below.

Early payment of fees by Virgin Media

Ofcom states in the Consultation that it was not in a position to carry out a full consultation on fees and make a final decision at the time of the 2009 Consultation and Final Statement. We also understand that any fee structure has to be proportionate, fair and in line with the *Principles for setting Licence Fees and Administrative Charges*. However, Virgin Media is concerned that any change to the fee structure for the period up to 31 March 2011 and potentially beyond, would be unfair to those providers, such as Virgin Media, who have already paid their notification fees in advance.

As Ofcom and ATVOD will be aware, Virgin Media (along with others) as an existing ATVOD member paid 2 years' notification fees in advance, totalling £5000. This was paid to assist ATVOD with critical funding prior to designation. It was Virgin Media's understanding (and the business rationale for its payment) that this advance was not just a loan to ATVOD but rather in lieu of fees for the first 2 years. Virgin Media would therefore be extremely concerned if further amounts were subsequently demanded.

Difficulty of assessing revenue

Virgin Media notes the possible options for the setting of the 2010-2011 fees. Ofcom and ATVOD are consulting on the following fee structures: (i) option A (revenue model); (ii) option B (revenue model with a minimum payment); and (iii) option C (flat-rate fees model).

Virgin Media understands that it is necessary to ensure a fair consultation process that Ofcom and ATVOD set out a range of options with regard to the setting of fees. However, practically it is unlikely that within the next year, and potentially further forward, the revenue models for VOD will be sufficiently developed to enable viable revenue based fee structures. Rather, before any such model is adopted, it will be necessary to have a full and frank discussion with industry, which could be facilitated via the VESG, on the feasibility of such a system.

Immediate need for ATVOD funding

Virgin Media understands that there is a pressing need for ATVOD to be adequately funded as soon as possible. In addition to the difficulty of devising a revenue based fee system for such a nascent market, we believe that any attempts to do so would be likely only to result in delays to the collection of fees and potentially a diminution of overall funding as ODPS providers struggle to apportion revenue (if any) to their ODPS.

In conclusion, given that: (i) Virgin Media has already provided fees for the first 2 years to ATVOD; (ii) the nascent state of the VOD market means that it is extremely difficult to ascertain with any certainty the level of revenue attributable to an individual ODPS; and (iii) that ATVOD needs immediate funding, Virgin Media considers that Ofcom/ATVOD should adopt a flat-rate fee; certainly for the 2010-2011 period and possibly also for the foreseeable future.

Virgin Media
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