

# BBC Worldwide response to Ofcom consultation on proposals for the regulation of video on demand services

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BBC Worldwide is the commercial arm of the British Broadcasting Corporation. It offers television content through syndication arrangements with third party sites such as YouTube and MSN. In addition, BBCW distributes a range of programming to a number of broadcasters who offer video on demand services to their customers.

Unlike other commercial operators, BBCW's video on demand activities are currently regulated; the BBC Trust has oversight of our activities and the services we make available to consumers must conform to the BBC Editorial Guidelines. These guidelines require that we label content appropriately to alert consumers to more challenging content, such as strong language and violence. They also require that, where possible, content is made available in a way in which access for children can be restricted, for example by the use of PIN protection or registration.

Following discussions between the DCMS and the BBC Trust, it has now been agreed that BBC Worldwide should be regulated under the new provisions for commercial video on demand services. This is in addition to the ongoing role of the BBC Trust as set out by the Royal Charter and the Agreement. BBCW welcomes this and the opportunity we have had to contribute to the industry stakeholder group, the VESG.

As we have already contributed to the work of the VESG, our response to this consultation is brief, answering only those questions where we believe further clarification is needed. On the whole, however, BBC Worldwide is supportive of the proposals set out in this consultation.

## VOD services subject to regulation

### Question 1:

#### **a) Is the draft Scope Guidance set out above appropriate?**

In general terms, BBCW believes that the draft Scope Guidance is appropriate. However we are concerned that the definition of editorial responsibility gives too broad an assumption that the original content provider has editorial responsibility. This will often not be the case, with service providers, rather than content providers, holding the ability to update or withdraw content.

#### **b) If you do not agree that the draft Scope Guidance is appropriate, please explain why and suggest alternative wording where appropriate.**

Section 4.61 states "the person with effective control of the organisation of those programmes is the person who determines the relevant viewing information provided alongside the on-demand programme". We do not believe that this is the case. For example, a content provider may supply content information to a service provider alongside a specific programme. However, the service

provider is then free to determine how that programme is organised on the service, for example, by featuring it on their home page or linking it to other content. BBCW believes that this section should be reworded “the person with effective control of the organisation of those programmes is the person who determines how and where the programmes should be presented on the service”.

Section 4.68 states in its rationale for why an aggregator would have editorial responsibility that “... the aggregator would have responsibility ... for providing the necessary programme information.” However, it should be noted that a content provider may supply the aggregator with this information in circumstance where the aggregator maintains editorial responsibility. We do not see the need to use this test of who provides the programme information in determining who has effective control of the organisation of programmes. We would therefore propose removing the words “and for providing the necessary programme information” from this section.

### **Question 3:**

**Do you wish to suggest alternative approaches to either of both:**

**a) the Scope Guidance; and/or**

**b) the proposed allocation of functions relating to notification?**

We have proposed two minor alterations to the Scope Guidance in our answer to question 1b.

## **The regulation of VOD editorial content**

BBC Worldwide’s parent organisation, the BBC, has played an active role in the development of ATVOD and has been an affiliate member since January 2007. Although the BBC, and BBC Worldwide are currently regulated by the BBC Trust rather than ATVOD, both organisations endorse the principles of ATVOD’s Code of Practice.

BBCW welcome the proposal that ATVOD should become the co-regulatory body for VOD editorial content. However, to be an effective regulatory body, we believe ATVOD should be granted the power to sanction service providers, with only the most severe sanctions being reserved for Ofcom, namely the imposition of a financial penalty or the closure of a service.

BBCW acknowledges the role ATVOD has played over the past five years in developing self-regulatory standards (such as the use of PIN protection and content labelling). We believe that ATVOD should continue to take a lead in this self-regulatory work in addition to its new co-regulatory functions.

### **Question 4:**

**a) Do stakeholders agree with Ofcom’s proposal that, subject to the necessary progress being made over the consultation period, it would be appropriate for Ofcom to designate co-regulatory**

**functions to ATVOD on 19 December 2009, or thereafter, when all relevant aspects of the ATVOD Proposal have been agreed, in relation to the regulation of VOD editorial content?**

**b) If you do not agree that it would be appropriate for Ofcom to designate ATVOD as the co-regulator for VOD editorial content, please explain why?**

We agree that it would be appropriate for Ofcom to designate co-regulatory functions to ATVOD.

## **Equality issues**

### **Question 8:**

**a) Do our proposals, as outlined in Sections 4, 5 and 6 concerning: draft Scope Guidance; delegation of functions relating to notification; and the implementation of a new coregulatory regime for VOD editorial content and VOD advertising have any likely impacts in relation to matters of equality, specifically to gender, disability or ethnicity?**

BBC Worldwide welcomes the proposals to ensure content cannot contain any incitement to hatred based on race, sex, religion or nationality. The BBC Editorial Guidelines already prohibit such content so there will be no impact on our business through the introduction of these provisions.