

Title:

Mr

Forename:

Marcus

Surname:

Lee

Representing:

Organisation

Organisation (if applicable):

Joint application on behalf of Portland Media Group, Strictly Broadband Ltd, Sport Media Group Plc, Playboy TV UK/Benelux Ltd, Broadcasting (Gaia) Limited

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What do you want Ofcom to keep confidential?:

Keep nothing confidential

If you want part of your response kept confidential, which parts?:

Ofcom may publish a response summary:

Yes

I confirm that I have read the declaration:

Yes

Ofcom should only publish this response after the consultation has ended:

You may publish my response on receipt

Additional comments:

Please note that this is a joint consultation

Question 1: a) Is the draft Scope Guidance set out above appropriate? b) If you do not agree that the draft Scope Guidance is appropriate, please explain why and suggest alternative wording where appropriate.:

(a) In general our group believes that the scope guidance is a useful and appropriate document which could be used and applied by potential notifying services, subject to review and possible revision in accordance with any changes to the proposed Regulations.

(b) Notwithstanding the generality of our response to Question 1a), we would make the following points for consideration with reference to the numbering adopted in the draft Scope Guidance;

2.13: we would welcome some clarification as to the term “hosting” service here, as this could mean a number of different types of service depending on specific circumstances.

2.17: at 4.81 of the Consultation Document, Ofcom notes that;

“the services provided online by broadcasters fell broadly into two groups, in relation to the audiovisual media provided, and the question of scope. These were: those who provided access to programmes; and secondly, those who provided clips and/or programme excerpts. In the majority of cases, our assessment was that the online services featuring clips were not ODPS, because the clips were typically part of a proposition which we assessed as fundamentally intended to promote the linear channel, rather than as a content destination in its own right. However, we also concluded that a service featuring clips could not be ruled out of scope solely by virtue of the fact that the service provided access to such short form content.”

We would submit that a typical scenario where a service provider will be determined to be out of scope of the proposed Regulations would be where its content is not “TV-like” by reason of it only distributing material showing short clips of longer programmes (but not distributing the programmes themselves), for the purpose of promoting access to long-form content accessible by viewers elsewhere than on that service itself. It might be useful here to set out an example of the short extracts referred to here, in order to help describe services that might be considered out of the scope of regulations by reason of being “promotional tools” rather than “content destinations” eg; a website primarily promoting DVD sales or access to linear Pay-TV channels, using short promotional clips or trailers of those DVDs or linear Pay-TV channels, and information as to how to order or purchase them, but not the full audiovisual content itself.

Question 2: a) Is the proposed allocation of functions relating to set out in paragraphs 4.87 to 4.91 appropriate? b) If you do not agree that the proposed allocation of functions relating to notification is appropriate, please explain why and suggest an alternative, where appropriate.:

(a) We feel that the allocation of functions referred to are appropriate

(b) N/A

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?:

Subject to our comments above, we feel that the proposed approaches to Scope Guidance and notification are appropriate.

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?:

(a) ATVOD would be our preferred body to undertake the designated co-regulatory functions.

(b) N/A

Question 5: Do you wish to suggest alternative approaches to Ofcom's proposal to designate ATVOD as the co-regulatory body for VOD editorial content, and if so what are these? :

N/A

Question 6: a) Do stakeholders agree with Ofcom's proposal that it would be appropriate for Ofcom to designate co-regulatory functions to the ASA on 19 December 2009, in relation to the regulation of VOD advertising? b) If you do not agree that it would be appropriate for Ofcom to designate the ASA as the co-regulator for VOD advertising, please explain why?:

(a) No Response

(b) N/A

Question 7: Do you wish to suggest alternative approaches to Ofcom's proposal to designate the ASA as the co-regulatory body for VOD advertising, and if so what are these?:

N/A

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 co-regulatory regime for VOD editorial content and VOD advertising have any likely impacts in relation to matters of equality,

specifically to gender, disability or ethnicity? b) Do you agree with our proposal to retain the Access Duty in relation to VOD? c) Are there any other possible equality impacts that we have not considered?:

(a) No Response

(b) N/A

(c) N/A