

Channel 4 response to Ofcom consultation on future regulation of on-demand programme services

- Channel 4 is a publicly-owned, commercially-funded public service broadcaster, with a statutory remit to be innovative, experimental and distinctive. Channel 4 was set up as a publisher-broadcaster, commissioning all of its content from the independent production sector rather than from an in-house base. Our not-for-profit model means that we work to maximise investment into remit, and in particular, high-quality, original UK content. In addition to the main Channel 4 service, Channel 4's portfolio includes E4, More4, Film4 and 4Music, as well as an ever-growing range of online activities that includes All4 as well as standalone digital projects.
- All4 is a digital destination that provides consumers with a comprehensive on-demand service, including catch-up programming from the last 30 days as well as extensive range of content from Channel 4's archives. In addition to on-demand content, All4 provides live streams of our channels, as well as exclusive online-only content such as Shorts, a series of short-form films, and Walter Presents, an on-demand service showcasing the world's best foreign-language drama.
- Channel 4 was a member of ATVOD and participated across its work in a range of areas. During this time Channel 4's services were never found in breach of any elements of the ATVOD code.
- Following the decision for Ofcom to take over as the sole regulator of on-demand programme services, it is important that on-demand providers have clarity on the process and mechanisms for dealing with regulatory issues. Channel 4 therefore welcomes Ofcom's consultation on this issue.

Procedures for investigating breaches of rules for on-demand programme services

- Ofcom have proposed that procedures for ODPS should be as closely aligned as possible to that of linear television. Channel 4 does note that in some circumstances ATVOD's processes were quicker and more streamlined than Ofcom's processes for broadcast regulation – and we would be concerned if the new regulatory system under Ofcom made on-demand regulation more complex.
- We would also be concerned if the changes to on-demand regulation allowed for 'regulatory creep' – for example, if the new framework was used to apply broadcast regulation to on-demand content. Within this context, we are concerned about Section 1.13 of the Draft Procedures, which states that *"if a complaint is about a 'catch-up' ODPS and the material has recently been shown on a television service, it*

may be more appropriate for Ofcom to consider the complaint under relevant broadcasting procedures as the substantive rules applying to broadcast television services are more extensive". Channel 4 believes that if a complaint is received in relation to ODPS than it should be reviewed under the regulatory code for ODPS services. The above section would create unfairness and inconsistency between 'catch-up' and other ODPSs by applying fundamentally different regulatory procedures to those services.

- This statement also lacks clarity – there is no guidance on how Ofcom will define the time period for whether the material has 'recently' been shown on a television service. We would be concerned if the time period was longer than the existing window for considering complaints for broadcast transmission, as it would effectively be creating a 'backdoor' for complaints to be considered under broadcasting standards and procedures despite the time period for broadcast complaints being closed. However, the fundamental point is as stated above, and the principal concern is that a complaint brought about material on an ODPS should be treated under the relevant regulatory procedures for ODPSs and not the procedures applying to broadcast television services.

Consultation on fees

- Ofcom's proposal is not to charge fees under section 368NA, and to cover its costs within the existing fees structure for television broadcasting licensees.
- Channel 4 is not convinced by Ofcom's arguments in relation to this proposal. In particular, we are concerned about the principle and precedent that it sets. In essence, it is requiring television broadcasting licensees to absorb the sole costs of regulation of on-demand services, despite the fact that there are many ODPS that are not broadcast licensees – and indeed, the vast majority of regulatory issues about on-demand content pertain to those who are *not* broadcasting licensees.
- Neither is it the case that it is only the broadcasting licensees who can afford to pay for the costs of on-demand regulation. There are numerous larger ODPS providers with high turnovers that would gain an unfair advantage by not having to pay regulatory fees. *Amazon, TalkTalk and Sainsburys* currently appear on the Ofcom list of regulated ODPS services but do not have broadcasting licenses and therefore would not be required to contribute fees. We therefore do not believe that this proposal would deliver the objectives, as cited by Ofcom, of creating a "level playing field".

- Given all these factors, Channel 4 does not support Ofcom's proposed fees structure option ("Option A"). Our preference would be for the "Option C" as proposed by Ofcom, which would require all major ODPSs to pay fees. We believe this would be a fairer and more proportionate proposal.
- We also note that Ofcom's estimates of the costs of regulation may be conservative. While we acknowledge that costs may initially be lower under Ofcom, it is unknown how the video on demand industry will grow and change and therefore what extent the regulation will need to change to meet developments. Among the justifications provided by Ofcom for ending co-regulation were figures showing video on demand viewership continuing to increase and a belief that Ofcom could raise the public awareness of ODPS regulation. Both would logically result in an increase to the work and complexity of on-demand regulation, and in turn, the administrative costs.
- Although the consultation document does identify savings that will be made under Ofcom it does not break down the operating costs within the Ofcom corporate structure. For example, the pre-existing Ofcom online team and their research projects may now logically be deemed a function of on-demand regulation. If the case, this would noticeably increase the cost associated with this regulation. It is therefore important that all major ODPS contribute to these costs.

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