

## **Additional comments:**

- 1) Pact is the trade association that represents the commercial interests of the independent production sector. Pact's remit is to work on behalf of independent film, television and new media producers to ensure the best legal, regulatory and economic environment for growth in this sector.
- 2) The UK copyright framework is considered one of the best in the world. It has been effective in enabling competition and growth in the television production sector due to the effective legislative framework set out in the Communications Act 2003 and the associated Terms of Trade allowing independent producers to exploit their rights in the marketplace.
- 3) UK TV exports as a whole generated around £1,207m in 2014/15 and the sale of digital rights internationally was up by 47% from the previous year. The highly competitive sector produces and distributes half of all new UK television programmes, as well as much of the UK's most popular, innovative and acclaimed content in digital media with new media revenues growing in the UK by more than 200% in 2014.
- 4) The 2014 BFI statistical yearbook notes that the total feature film market in the UK in 2014 was valued at an estimated £3.8 billion with digital video revenue increasing in 2014 by 35% .
- 5) For further information please contact Pact's Business Affairs Executive, Elouise West on [elouise@pact.co.uk](mailto:elouise@pact.co.uk)

### **Question 1: Do you agree with Ofcom's proposal substantively to align procedures for investigating breaches of rules for ODPS with established procedures for linear television broadcasting, and do you have any specific comments on any aspect of the draft Procedures at Annex 5?:**

Pact welcomes the Regulator investigating potential ODPS breaches under the more extensive broadcasting procedures. This is already the case for content originally broadcast via a licensed television service and due to the growing level of overlap between linear television licensees and ODPS licensees this seems a proportionate adjustment. It is understood that the Regulatory framework is in place to protect the public and as the public are increasingly viewing ODPS as if it were television, it is important for the complaints, investigatory procedures and the public's expectation to become aligned.

Due to the sustained availability of potentially offensive content via ODPS, Pact understands why an expedited review process is necessary to reduce the level of potential harm to the public however it is essential that ODPS providers are given sufficient notice to provide representations as part of the review process. It is also necessary to understand the types of complaints that would result in an expedited process so that the ODPS community have an understanding of the possible consequences before publication of any content. Perhaps this could be included in the On-Demand Rules and Guidance.

### **Question 2: Do you agree with Ofcom's proposal not to charge fees under section 368NA of the Act, and specifically to cover the small incremental cost involved in becoming sole regulator (rather than co-regulator) of ODPS**

**within the existing fees structure for television broadcasting licensees? If not, which alternative option do you consider would provide a proportionate, fair and pragmatic basis for apportioning these costs?:**

Removing or reducing regulatory fees will provide an important financial boost to video on demand service providers which will drive competition and encourage innovation in the sector with greater resources available in the market for investment in new content and services.

Pact strongly encourages incorporating the ODPS regulatory fee within the existing fees structure for television broadcasting licensees as the majority of ODPS use relates to catch up viewing at 57%. Ofcom's proposed Option A requires the least disruption to the existing system and removes what may be considered a financial barrier to start-ups notifying Ofcom that they are providing an ODPS. However, continuous review of the ODPS sector is essential to keep up with changes in the market which may distort what is currently considered a proportionate measure but may swiftly change as the trend of viewing TV-like content via platforms, that potentially do not have an equivalent linear TV channel, grows. As part of this continuous review, Pact would expect any fee changes implemented for the sector as a whole to mirror the turnover based fee structure previously offered under the ATVOD regime and for any such proposal to be subject to further public consultation.