



**PROPOSALS FOR THE SETTING OF REGULATORY FEES FOR VIDEO ON DEMAND SERVICES  
FOR THE PERIOD TO 31 MARCH 2011 – RESPONSE BY BRITISH SKY BROADCASTING  
LIMITED**

**1. INTRODUCTION**

- 1.1. On 26 March 2010, Ofcom and ATVOD published a consultation document entitled “Proposals for the setting of regulatory fees for video on demand services for the period to 31 March 2011” (the “**Consultation Document**”). This document comprises the response of British Sky Broadcasting Limited (“**Sky**”) to the Consultation Document.
- 1.2. The Consultation Document proposes three possible options for setting fees for the financial year 1 April 2010 to 31 March 2011 (“**2010-2011 Fees**”). This response is confined to Sky’s view on what an appropriate methodology should be for the 2010-2011 Fees.

**2. AN APPROPRIATE METHODOLOGY FOR THE 2010-2011 FEES**

- 2.1. Sky notes that in the Consultation Document, Ofcom and ATVOD set out the following three possible options for the 2010-2011 Fees:
- 2.1.1. Option (A) – *Revenue Option* – Fees being calculated based on the video on demand (“**VOD**”) revenue that is generated by each individual VOD provider, with five different possible tariffs used to calculate the fee. Notably, no fee would be payable if no VOD revenue is generated;
- 2.1.2. Option (B) – *Revenue model with a minimum payment* – this is identical to Option (A), with the exception of a minimum fee of £1,000;
- 2.1.3. Option (C) – *Flat-rate fees model* – A flat-rate fee of £2,500 per on-demand programme service.

Revenue based fees

- 2.2. Sky considers that it will not be straightforward for broadcasters to determine the amount of revenue that is generated from VOD due to the difficulty associated with attributing revenue to VOD services (such difficulties are explained in brief below). Before explaining those difficulties, Sky first sets out the underlying reason for the difficulties, which is that VOD content is often probably made available to certain people (*e.g.* subscribers of certain other services) at no additional cost.
- 2.3. A number of business models for VOD are currently being tested. Some of those business models provide for the direct selling of VOD content to consumers, *e.g.* the Sony PS3 Video on Demand service. Other business models make VOD content available to consumers without requiring the payment of an additional fee to either Sky or the content provider. For example:
  - 2.3.1. subscribers with a Sky+HD set top box or a newer Sky+ set top box are able to access the Sky Anytime service. Such subscribers are able to access the content to which they have a linear entitlement without an additional payment, *e.g.* Sky Movies subscribers can access Sky Movies content, whereas non-Sky Movies subscribers cannot access such content unless they subscribe to Sky Movies; and
  - 2.3.2. Sky Player content is made available at no additional cost to Sky TV subscribers who take either Sky's Multiroom product or Sky's Unlimited broadband product. Subscribers to either of these products are able to view, without charge, content from channels that they are entitled to view on a linear basis, *e.g.* Sky Movies subscribers can access Sky Movies content, whereas non-Sky Movies subscribers cannot access such content unless they subscribe to Sky Movies.
- 2.4. The overwhelming use of Sky's VOD platforms is comprised of users accessing content on a 'without charge' basis. There are therefore difficulties in allocating 'revenue' to such VOD services. It is potentially even more difficult to allocate 'revenue' to multiple VOD services operated by the same person which each allow access to the same VOD content.

- 2.5. Accordingly, whilst it is the case that there may be some revenue attributable to certain users accessing some content on a VOD basis via one of Sky's VOD platforms, the overwhelming majority of users of Sky's VOD platforms do so on a 'without charge' basis. The issue becomes even more complex where VOD content can be accessed from a platform that enables VOD, but which a consumer does not use to access VOD content, e.g. the stand-alone Sky Player service (i.e. the service which is not tied to a DTH satellite subscription), which enables subscribers to view linear channels.
- 2.6. In Sky's case, there would be significant difficulties in determining the 'relevant turnover' for its VOD services:
- 2.6.1. Sky's internal accounting systems do not allocate revenue per 'on-demand programme service' or even on an aggregated service basis; and
- 2.6.2. in most cases, access to VOD content (irrespective of the 'platform'/'service' used to access that content) is provided at no incremental charge to the user where that user has an existing Sky subscription to view that content as part of a linear channel.
- 2.7. For these reasons, Sky considers that basing the fees for regulating VOD content on the revenues 'generated' from users accessing such content would not be meaningful. In particular, (i) it would not necessarily reflect the use or value of such content and (ii) it may be time-consuming and difficult for the regulators to determine the principles that should apply in terms of the basis for the fees and Sky considers that it may be time-consuming and difficult for broadcasters to interpret and apply such principles.

*Flat-rate based fees*

- 2.8. The Consultation Document appears to suggest that under Option (C) providers of VOD would need to pay a flat-rate of £2,500 per on-demand programme service for the 2010-2011 Fees. If this is the case, as Sky understands that it is, then this would appear to be an appropriate amount, provided that there is also a reasonable, proportionate and targeted approach to determinations of the scope of the AVMS Regulations 2009, in particular in respect of so-called 'multiple services'.

- 2.9. A fee of £2,500 may be reasonable where a service provider is deemed to have a single service across multiple platforms. The fee becomes decidedly onerous and a barrier to entry where a separate fee is required in respect of the same content that is being made available across a range of platforms. The issue is compounded where content is made available at no incremental cost to the user's linear subscription, and accordingly, no additional revenue may be received by the content provider in respect of VOD viewing.
- 2.10. In the event that providers of VOD content are required, under Option (C), to pay a fee in respect of each instance where the same content can be accessed on a VOD basis, Sky considers that the regulators should consider whether the scope of the services that are caught should be set such that persons providing a VOD service are not dissuaded from providing VOD content to multiple 'platforms'. Any approach adopted, should not disincentivise content providers from making their content available via the largest number of different VOD platforms.

**Sky**

**May 2010**