



Ms Susan Naisbitt
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Dear Ms Naisbitt

Re: Proposals for the setting of regulatory fees for video on demand services for the period up to 31 March 2011 (the "Current Consultation")

PPA is the trade body for UK magazine, journal and business media publishers.

PPA's membership consists of some 250 members and affiliates who publish consumer, customer (for example magazines produced for third parties such as retailers, TV companies or airlines) and business magazines, journals and directories in addition to conducting research, organising conferences and exhibitions.

It should be noted that for PPA members online audiovisual ("**AV**") services are forming an increasingly important part of the exploitation of their content. However, the majority of AV services offered by PPA members are almost certainly currently outside the scope of "on demand programme service"¹ ("**ODPS**").

Nevertheless, PPA members may in the near future want to offer certain VOD services that possibly satisfy the test for ODPS.

PPA has not answered the questions in the Current Consultation, instead focusing on the inequitable proposal for a flat-rate fee.

The Current Consultation

The Current Consultation (at paragraph 1.8) highlights that several respondents to Ofcom's Consultation on the Regulation of VOD Services in 2009 (the "**2009 Consultation**") "raised concerns about the potentially disproportionate and unfair effect of a flat-rate fee on smaller VOD service providers": PPA was one of those.

For ease of reference, in its response to the 2009 Consultation, PPA stated:

¹ Communications Act 2003, section 368A

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"ATVOD proposes that a flat notification fee is charged to providers of ODPS for the first 15 months of operation.²

This clearly prejudices smaller VOD operators and those who may be caught by poor scope definition but offer minimal VOD services. If a traditional television broadcaster offering on-demand, catch up services, with hours and hours of content only has to pay the same as, for example, an SME magazine publisher that happens to offer some AV content that just passes the threshold test to be considered a provider of ODPS - the system is inherently unfair. While £2500 may be a relatively modest sum for large businesses, it will have a disproportionate impact on smaller businesses."

Magazine and business media providers' websites and digital offerings grow and develop organically - responding to consumer needs - and so many PPA members could theoretically expand their VOD offering so as to be considered ODPS. Many of these publishers could be SMEs or start up businesses for whom circa £2500 could make a VOD offering uneconomic.

As such the requirement to notify the appropriate regulatory authority *before* offering ODPS - and pay a fee³ (which could be a flat fee of £2500) - could mean that a publisher is unable to satisfy consumer demand by offering VOD services as they cannot afford the regulatory fee. This could potentially lead to consumer detriment if consumers cannot access certain content in a manner that they desire.

And even if a potential provider of ODPS could afford to pay the flat fee of £2,500, it is neither proportionate nor reasonable to charge them such a fee: it is an unjustified and excessive tax.

Possible Options for the 2010-2011 Fees

PPA would urge Ofcom and the Association for Television on Demand to consider Option A (revenue model) and Option B (flat-rate fees model) as the preferred method for establishing the fees for 2010 - 2011.

The VOD market is nascent but developing rapidly and regulatory fees should not inhibit this growth.

Yours sincerely



James Evans
Senior legal executive
PPA

² Paragraph 5.27 of the 2009 Consultation states that the notification fee is likely to be in the region of between £2,000 and £2,500.

³ Audiovisual Media Services Regulations 2010