



BT Response to Ofcom's consultation document:  
**“Proposals for the regulation of video on demand services”**  
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## **Executive Summary**

We welcome the opportunity to comment on Ofcom's proposals for the regulation of Video on Demand (VOD). We understand that there may be some changes in the UK Government's approach to implementation of the Audio Visual Services Media Directive (AVMSD), which could have consequences for Ofcom's regulatory responsibilities and its approach to designating co-regulatory organisations. Our comments are therefore provisional and based on Ofcom's current proposals. We will, of course, comment further should any amendments result in material changes to the proposed co-regulatory regime

On this basis, we support the overall position adopted by Ofcom in this consultation, and, in particular, that ATVOD becomes the co-regulatory body for regulation of editorial content and that the ASA regulates advertising content.

The following summarises our responses to the questions raised in the Consultation Document:

- On the whole, we feel that the Scope Guidance is appropriate. In particular, we agree that only one notification should only be required where a single on-demand programme service offers multiple categories of programme genres.
- There needs to be a transparent and coherent Memorandum of Understanding between Ofcom and ATVOD to ensure roles and responsibilities of each are clear to all parties, especially for service providers.
- An industry stakeholder group will be an important adjunct to ATVOD and Ofcom if the UK is to develop a healthy and well functioning VOD market.
- To be effective, the co-regulator will need appropriate funding arrangements in place from the start of the new regime.
- There are several points that require clarification regarding initial agreement and subsequent in-life management; the code of practice is one such example.
- There needs to be a transparent approach to investigations and sanctions. Any sanction should be in proportion to the breach.
- The ASA should report to Ofcom more frequently than proposed to ensure problems are recognised and dealt with quickly.
- Ofcom should reconsider its proposal to retain responsibility for encouraging VOD providers to make their services more accessible.

## **BT's response to specific questions**

*Question 1a) Is the draft Scope Guidance set out above appropriate?*

We agree that on the whole the Scope Guidance is appropriate given it is restricted to "television like" VOD services. Based on the Scope Guidance, we agree that BT would only be required to make one notification for "BT Vision" as it is a single VOD service (albeit covering multiple genres). We agree that for the purposes of notification, no distinction should be made between different content genres given these are not separate services, merely a means of identifying different genres of programming. This avoids the imposition of a complicated and ambiguous regime of multiple notifications (i.e. where additional content genres/programme packages and so forth are added, ceased or changed on the VOD service) and minimises the administrative burden on ATVOD and Ofcom.

We are pleased to see that services that are ancillary to the on-demand programme service (such as "online games" related to TV-like programmes) are excluded from the definition of VOD services.

We are unclear how the Scope Guidance will be managed should it require changes in the future. We suggest that it will become part of the ATVOD code of practice and thereby subject to consultation.

*Question 1b) If you do not agree that the draft Scope Guidance is appropriate, please explain why and suggest alternative wording where appropriate.*

Please see our response to question 1a.

*Question 2a) Is the proposed allocation of functions relating to set out in paragraphs 4.87 to 4.91 appropriate?*

We agree in the main with the proposed allocation of functions. However, we feel that Ofcom will need to establish a transparent and coherent Memorandum of Understanding regarding the nature of the co-regulatory regime. This is to ensure that the role, responsibilities and the extent of the co-regulator's remit are clear vis a vis Ofcom's responsibilities, including setting out the circumstances in which one or the other will take primary responsibility. We believe careful consideration needs to be given to the division of roles to ensure that a practical solution is found that gives ATVOD appropriate decision making and enforcement powers at the outset. This will help ensure that ATVOD are established as the key regulatory body for VOD regulation.

There needs to be transparency regarding the sanction process and it is vital that fines are in proportion to the severity of the breach. We therefore recommend that ATVOD produce a sanctions guide detailing the types and severity of possible breaches, alongside the scale of associated fines. This will ensure that the consequences for non-compliance are clear from the beginning.

An industry stakeholder group will be an important adjunct to ATVOD and Ofcom if the UK is to develop a healthy and well functioning VOD market. The group would provide specialised insight into current and future market trends including any problems, thus ensuring that ATVOD develops an appropriate, proactive and flexible regulatory regime.

To be effective the co-regulator will need appropriate funding arrangements in place at the start of the new regime.

It is unclear how the code of practice will be established and subsequently managed in-life. We assume that the code will be established by ATVOD and Ofcom with input from the industry stakeholder group and that any in-life changes will require consultation. It would be useful to have this clarified.

*Question 2b) 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.*

Please see our response to question 2a.

*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?*

Please see our response to questions 1 and 2.

*Question 4a) 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?*

We agree with the proposal to designate ATVOD the co-regulator for the regulation of VOD editorial content. We will continue to support and participate in the preparatory work carried out by VESG. Please also see our response to question 5.

*Question 4b) 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?*

We support the ATVOD proposal.

*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?*

We support the ATVOD proposal.

*Question 6a) 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?*

We agree with the proposal to designate the ASA as the co-regulator for regulation of VOD advertising. Please also see our response to question 7.

*Question 6b) 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?*

We support the ASA proposal.

*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?*

We recommend that the ASA should report to Ofcom more frequently than the annual proposal. We suggest that it match ATVOD's reporting timetable. We believe more frequent reporting will help to facilitate proactive and timely regulation by highlighting any issues at the earliest possible juncture.

*Question 8a) 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?*

We cannot foresee any issues regarding equality.

*Question 8b) Do you agree with our proposal to retain the Access Duty in relation to VOD?*

We suggest that Ofcom revisits its proposal to retain the Access Duty since both the Duty itself and its application might sit better with ATVOD given its specific understanding and experience of the VOD sector. We are concerned that there is a danger that Ofcom's approach to this issue will be based on its mainstream broadcasting expertise which will not read across well to the VOD market. Although it is unclear how the duty to "encourage VOD service providers to ensure that their services are gradually made accessible to people with sight or hearing disabilities" will be delivered in practice, at least if the responsibility sits with ATVOD it can use this as leverage to gather further intelligence about the wider VOD market.

*Question 8c) Are there any other possible equality impacts that we have not considered?*

We are unaware of any other possible impacts.

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