

VOD Consultation

S4C Response

Section 240B(9) of the Communications Act 2003 (the “2003 Act”), as proposed, states that neither Ofcom, nor any body designated by Ofcom to be a regulatory authority, is a regulatory authority in relation to on demand programme services provided by the Welsh Authority except in relation to the requirements of the proposed section 240F that relate, or are capable of applying, to advertising other than product placement or sponsorship, or any service provided by the Welsh Authority authorised by, or under, section 206 of the 2003 Act. This section effectively carves out such services provided by the Welsh Authority in the same manner as it carves out services provided by the BBC.

Despite this carve out, S4C is still under a duty to notify any relevant co-regulatory body of the existence of any such relevant services. In relation to S4C’s public VOD services which carry advertising, it is unclear whether the notification should be made to ATVOD or ASA. In S4C’s view, it should not have a duty to notify ATVOD, as ATVOD will not regulate the Welsh Authority in relation to such services. If nonetheless it is determined that S4C does have to notify ATVOD, S4C does not believe that it should have to pay a fee to ATVOD, as ATVOD has no power to regulate the content of S4C’s public VOD services.

In relation to the fee structure that would need to be put in place by ASA, assuming that Ofcom decides to appoint ASA as the co-regulatory body for advertising, we believe that further work, and consultation, would need to be carried out to ensure an equitable fee structure was put in place, as referred to in paragraph 11.5.3 of ASA’s proposal. For example, if the advertisements carried on S4C’s relevant services were exactly the same as the advertisements carried on S4C’s public television services (which are already regulated by ASA, and for which service a fee is already paid to ASA), we believe that it would be disproportionate to levy an additional fee upon S4C. In circumstances, however, where the advertisements carried by S4C on its non-linear services were not identical, we accept that a reasonable fee would need to be paid to ASA.