

**Title:**

**Forename:**

**Surname:**

**Representing:**

Organisation

**Organisation (if applicable):**

Viasat Broadcasting LTD

**Email:**

**What do you want Ofcom to keep confidential?:**

Keep part of the response confidential

**If you want part of your response kept confidential, which parts?:**

These are clearly marked in the response and appear here in the additional comments section

**Ofcom may publish a response summary:**

Yes

**I confirm that I have read the declaration:**

Yes

**Ofcom should only publish this response after the consultation has ended:**

Yes

**Additional comments:**

INFORMATION ABOUT VIASAT

Viasat Broadcasting, with its main offices in London, Chiswick, is the broadcasting division of Modern Times Group MTG AB, and operates businesses which make it the largest broadcaster of free TV and satellite premium pay TV services in Scandinavia and the Baltics as well as one of the leading broadcasting groups in Europe reaching viewers in 30 countries.

MTG companies currently produce and operate 30 free TV channels and more than 25 pay TV channels which are received throughout Europe with perhaps the best known channels being those broadcast under the TV3 brand. 25 of these channels are operated from the UK

and regulated by Ofcom.

MTG also operates the Viasat satellite platforms in Scandinavia and the Baltics and distributes television services via IPTV, mobile phones, the Internet and xDSL.

Overall, the proposals for regulation of VOD services are in line with Viasat's expectations. Viasat believes that further consideration needs to be made in the application of fees of VOD services and therefore proposes their own fee structure for Ofcom to consider.

## POINT 9

### FLAT FEE PROPOSALS - VIASAT'S CONCERNS AND SUGGESTIONS

Although in the consultation you do not provide a question with regard to the fee proposals, the issue is of major importance for us, as well as for a great number of audiovisual media service providers. We therefore consider appropriate to point your attention to it and set out our view.

We refer to point 5.27 of the consultation where the following is stated:

Due to the nascent nature of the VOD industry, Ofcom does not have comprehensive quantitative data on which to base a full cost/benefit analysis. Based on an estimate of at least 150 notifiable services, and taking into account the estimated budget for the regulation of VOD services of £400,000 (see also paragraph 4.3.4, Annex 7) for the first 15 months (19 December 2009 to 31 March 2011), the initial notification fee would be likely to be between £2,000 and £2,500 for each service (up to £500 for the period 19 December 2009 to 31 March 2010 and up to an additional £2,000 to cover the period 1 April 2010 to 31 March 2011). It is suggested that it would be appropriate to review the fee structure for the financial years after 2010-11, and Ofcom would expect the co-regulatory body to consult stakeholders before taking any decisions in this area. In addition, the Government undertook its own cost-benefit analysis of co-regulation (see footnote 10). In view of the information available, Ofcom considers that the costs to industry would be marginal. Accordingly, we consider that a qualitative assessment of the impacts on stakeholders is appropriate in this case.

We understand that the fee will be decided by ATVOD and approved by Ofcom. It is not clear whether we will be given another chance to comment on the fee once the decision is made.

We do understand the difficulty of deciding such fee having in mind that it is not easy to estimate with certainty the number of services which will be notified or the funds required for the operation of ATVOD on the first stages.

Notwithstanding this however, the flat fee of 2,000 or 2,500 GBP seems very excessive for the majority of the VOD services which will be available on the market.

You mention in point 5.31c of the consultation that "this fee would be broadly similar to that paid to Ofcom by applicants for Ofcom Television Licensable Content Service licences". We agree that the fee should be similar, and similarly calculated, but this aim cannot be achieved

by the fixed fee on the levels proposed.

It is possible that Ofcom and ATVOD when considering this flat fee had in mind the major VOD providers, which run well established VOD services that generate a good amount of revenues. There are however a great number of VOD services which have very limited to no revenues, and there is no justification for such services to pay such high flat fees.

We have both type of services; i.e. a typical VOD services which generates or at least expects to generate revenues which would justify the payment of a fee possibly on the size proposed, but also services which make no or very little money.

For better illustration we provide a brief description of two of our on demand services, which hopefully will give you the indication that similar services of both types exist, and therefore the problem we are facing will be faced by a great number of service providers:

We believe that there are a lot of services similar to the above provided by other providers and everyone would agree that a fairer solution should be found with regard to the licence fees.

One might argue that every service including the small ones - needs to be regulated and thus costs no less money to the regulator than a much bigger service which also needs to be regulated. However this is not true in most cases, and it is well reflected in the TLCS licence fees. A small service is possibly watched by much smaller number of people and originates a much smaller number of complaints.

Looking at the figures and Ofcom's publications, one gets the impression that e.g. ITV or Channel 4 occupy Ofcom much more (often proportionately according to the licence fees they pay) than the small channels which appear somewhere on Sky's EPG.

We believe that the TLCS tariff is a fair one and we believe that a similar structure should also apply for the VOD services.

It is also worth noting that in point 5.34(d) of the consultation, it says: "...we consider ATVOD is correct in its view that funding from the notification fees of providers to be collected by Ofcom would be in excess of its current budget and that this should provide sufficient income for the new regulatory body to discharge its duties". According to your projections, the fees to be collected with the 2k or 2.5k flat fee will bring an excess of the money required; it is thus fair to have a look at reducing the fees and making them fairer and closer to the amount that is actually required.

Taken into consideration the above, we would propose a set up similar to the TLCS one, but in a simpler form and taking into consideration the different circumstances.

Since at the moment it is not easy to make up formulas for the fee calculations like the ones you have for the TLCS fees, due to the uncertainty on the number of registrations and the difficulty on making detailed projections, a good solution would seem to have a flat minimum fee, much smaller than the one suggested (i.e. less than 1,000 GBP) and a percentage of annual turnover (either generated in 2009 if the service existed or based on good faith revenue projection for 2010 if the former does not exist). The percentage at this stage could be between 0.07 and 0.1, which is still much higher than the TLCS fee, but at

least on more reasonable levels and taking into consideration the size of each service. This could apply for the first year and be revised afterwards for the next year when more data will be available that will help for a better and fairer for all parties fee structure.

If there is anything you would like to discuss on the fee issue, please do not hesitate to contact Vanda Rapti at [vanda.rapti@viasat.co.uk](mailto:vanda.rapti@viasat.co.uk) or on the following numbers: 020 8742 5147; 0793 1900 859.

**Question 1: a) Is the draft Scope Guidance set out above appropriate? b) If you do not agree that the draft Scope Guidance is appropriate, please explain why and suggest alternative wording where appropriate.:**

Viasat agree that the “scope” guidance is appropriate.

Although, in essence you have covered for it, it might worth clarifying - since your guidance is quite analytical - on 4.66 that aggregated services may well also comprise of a combination of a collection of on demand programmes from third party suppliers and a service offered by the aggregator (for which of course the aggregator will be the “service provider” and have the responsibility - while such aggregator will not have responsibility for the third party services).

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

Viasat agree that the allocations of functions are appropriate. However, it might worth making an appropriate clarification for the procedure which will be followed in the event that the co-regulator does not notify the ODPS provider of its notification requirements and the ODPS provider does not notify the co-regulator, because such provider had accessed their service was not within ?scope?.

**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?:**

Viasat does not have any alternative approaches to the above.

**Question 4: a) 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? b) 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?:**

Viasat agree that it would be appropriate for Ofcom to designate co-regulatory functions to ATVOD when all relevant aspects of the ATVOD proposal have been agreed.

**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? :**

Viasat agree with Ofcom's approach. We would like to take the opportunity and point out however that we do not agree with the fee proposals, and we have provided our view on this as well as our proposals in the end of this document.

**Question 6: a) 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? b) 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?:**

Viasat agree that it would be appropriate for Ofcom to designate co-regulatory functions to ASA on or after the 19 December 2009.

**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?:**

Viasat agree with Ofcom's approach.

**Question 8: a) 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? b) Do you agree with our proposal to retain the Access Duty in relation to VOD? c) Are there any other possible equality impacts that we have not considered?:**

Viasat do not think that there will be a likely impact in relation to equality.

It should be noted however, that non-UK facing broadcasters who do not currently have to provide access services on their linear services, should to a similar extent not have to provide access services on their VOD services. Additionally, it is worth considering that when non UK facing broadcasters get more responsibilities with regard to access services, there should not be an automatic extension to the VOD services. Such extension would require a lot of consideration as the impact would be very significant; the costs would be very high and often disproportionate with services provided in small countries (-small revenue) and it would also be time consuming to restructure the VOD systems in order to comply with such requirements.

Viasat agree for Ofcom to retain Access Duty in relation to VOD.