[GB] New Industry Co-Regulator

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The Association for Television On-Demand (ATVOD) is now been formally “designated” as the co-regulator for UK Video on Demand (VOD) services. Formerly, it was an industry association. ATVOD has been restructured, “to ensure independence from the industry’s commercial interests and to make sure that protection of the public is its top priority.” It will have a board comprising five independent members and four industry members, from BSkyB, BT, Virgin Media and Five, to provide a “general industry perspective”.

Regulation of these services is a requirement of the EU's Audiovisual Media Services Directive and covers all VOD services which are "TV-like", namely, services which make programmes available for members of the public to view at a time of their choice (i.e., the form and content is comparable to that of television programmes). Not, therefore, within ATVOD’s jurisdiction would be electronic versions of newspapers; private websites and un-moderated user-generated material (hosted on, e.g., YouTube).

The legal basis for regulating such services is contained in the Audiovisual Media Services Regulations (2009), which entered into force on 19 December 2009. A VOD service subject to regulation is called an ‘on-demand programme service’ in the Regulations and defined in section 368A of the Communications Act 2003 (as amended) (see paragraph 2 of the Regulations). The statutory provisions affecting on-demand programme services are set out in new sections 368A-368R inclusive of the Communications Act 2003.

Advertising included in those services will be regulated by the Advertising Standards Authority.

Ofcom remains the overall regulator, meaning that Ofcom retains “back-stop powers to intervene if the new co-regulatory system does not work effectively” and “the power to impose sanctions against service providers.”

Examples of such services are BBC iPlayer, 4OD, ITV Player, SkyPlayer and Demand Five, available through Virgin Media, Sky and BT Vision and over the internet. However, content on BBC iPlayer will not be regulated by ATVOD, but will fall within the prevailing BBC content regulation arrangements, i.e., will continue to be regulated by the BBC Trust and Ofcom.

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ATVOD must ensure that services conform to certain (i) programming standards (e.g., must not contain any incitement to hatred based on race, sex, religion or nationality; must not provide material which might seriously impair the physical, mental, or moral development of minors, unless it is made available in such a way that ensures that minors will not normally hear or see such content; and sponsored programmes and services must comply with applicable sponsorship requirements) and (ii) advertising standards (e.g., advertising must be readily recognisable and cannot contain any surreptitious advertising or use subliminal advertising techniques; advertising must not encourage behaviour that is prejudicial to the health or safety of people; and tobacco products, prescription-only medicines or medical treatments cannot be advertised).

Further obligations on VODs are also imposed in virtue of the 2010 Regulations: a requirement on all providers to notify the regulator within a specified period if they are providing a VOD service; a requirement for those providers to pay a notification fee (the level has not yet been announced); and a requirement for those providers to retain a recording of content for 42 days from the date it was last made available to users of the service. Failure to comply may lead to enforcement action, including fines and, ultimately, a criminal prosecution for providing an illegal service

Ofcom, "Designation Pursuant to Section 368B of the Communications Act 2003 of Functions to the Association for Television On-Demand in Relation to the Regulation of On-Demand Programme Services"

http://www.ofcom.org.uk/tv/ifi/vod/designation180310.pdf

Ofcom, "Information for Providers of Video on Demand ('VOD') Services Regulation of VOD Services", 12 February 2010

http://www.ofcom.org.uk/tv/ifi/vod/vodservices.pdf

Ofcom, "Update on Regulation of TV-Like Video on Demand Services"

http://www.ofcom.org.uk/tv/ifi/vod/20100318

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