[GB] Should the Form and Content of 'Hardcore' Sex Videos Made Available on Websites be Considered 'TV-Like'?

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On 13 May 2011, the first-ever decisions on appeals against determinations of The Authority for Television On Demand (ATVOD) to Ofcom were made.

The two cases at hand concerned the question of whether two "adult websites" fall within the scope of the Audiovisual Media Services Regulations 2009, as being on-demand programmes (ODPs) comparable to a television programme.

ATVOD concluded that both services met the statutory criteria, including that their "principal purpose is the provision of programmes, the form and content of which are comparable to the form and content of programmes normally included in television programme services", and so should be considered ODPs.

It was on this point that Playboy TV appealed to Ofcom.

Playboy argued that as the video content on the two sites "features fully explicit sexual images, and was therefore too explicit to be broadcast on UK television, it was not TV-like and was not therefore subject to the new ATVOD rules designed to protect children from video-on-demand content which might cause them serious harm."

ATVOD had ruled that the videos did carry content that was more explicit than adult programmes shown on UK TV services. However, (a) the videos were "comparable to such programmes"; and (b) they "were essentially the same as 'adult' programmes that are frequently broadcast on linear TV channels in other EU jurisdictions". As such, they were, according to ATVOD, subject to the rules designed to protect children.

Ofcom upheld ATVOD's determinations. It found that the "the form (and format) of the video material available on the Service [were] clearly 'comparable' to the form of programmes normally included on television programme services, and television broadcasting in general." It also found that the content, whilst not identical to programme content found on UK TV, was "comparable and, therefore, subject to the rules concerning the protection of children."

Ofcom decision - "Climax 3 Uncut", 13 May 2011

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http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/Climax3Uncut.pdf

Ofcom decision - "Demand Adult", 13 May 2011

http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/DemandAdult.pdf

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