[GB] Ofcom Upholds ATVOD Rulings

IRIS 2012-3:1/25

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On 18 January 2012, Ofcom upheld ATVOD's Determinations that three Viacom companies - Nickelodeon UK Limited, The Paramount Partnership and MTV Networks Europe - were the responsible persons for VOD services featuring their content on the Virgin Media platform.

The issue concerns Section 368A of the Communications Act 2003. This defines 'editorial responsibility' which, in turn, triggers regulatory responsibility.

A service is only an On Demand Programme Service (ODPS) if it satisfies the defining criteria in section 368A of the Act. Key amongst these for the purpose of the appeals are in sections 368A(1)(c) and (d), that,

" a service is an ODPS if (…) (c) there is a person who has editorial responsibility for it; [and] (d) it is made available by that person for use by members of the public".

The concept of editorial responsibility is defined in terms of general control by section 368A(4), which states that ""a person has editorial responsibility for a service if that person has general control (a) over what programmes are included in the range of programmes offered to users; and (b) over the manner in which the programmes are organised in that range; and the person need not have control of the content of individual programmes or of the broadcasting or distribution of the service".

ATVOD had studied the Agreement between each company and Virgin Media whereby each "(…) had agreed it is the provider of the ODPS comprising the Appellant's content under the Agreement and has "editorial responsibility" over the same, save in respect of any insertions or advertising placed by Virgin Media in or around the content".

Further, "in relation to organisation of material in particular, ATVOD pointed out that the Appellant in each case provides the metadata accompanying the programmes".

Ofcom Appeal Decision, 18 January 2012

http://www.atvod.co.uk/uploads/files/Ofcom_decision_-_appeal_of_ATVOD_determinations_-_Viacom_channels.pdf

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