[GB] Regulator Clarifies Meaning of Editorial Responsibility for On-Demand Programme Services

IRIS 2012-9:1/24

Tony Prosser
University of Bristol Law School

The UK communications regulator (Ofcom) has asked the co-regulatory Authority for Television on Demand (ATVOD) to reconsider a decision relating to editorial responsibility for on-demand programme services. The Communications Act 2003, as amended to implement the Audiovisual Media Services Directive, requires that there be a person with editorial responsibility for such services, who must notify ATVOD and pay a fee. Editorial responsibility is defined in terms of 'general control' over what programmes are included in the service and over the manner in which such programmes are organised, although it is not necessary to have control of the content of individual programmes nor of the broadcasting and distribution of the service.

ATVOD was designated as the appropriate regulatory authority by Ofcom and had decided that British Sky Broadcasting Ltd (BSkyB) had editorial control over, and was the provider of, services provided by MTV, Nickelodeon and Comedy Central. The Act made it clear that only one person could have editorial responsibility. BSkyB had the final say on the selection of programmes for inclusion in the service, and the programmes comprising the service were not organised in any respect other than the placement given them by BSkyB within the service.

BSkyB appealed to Ofcom against the decision, claiming that ATVOD had not taken appropriate account of the intentions of the parties and that its decision was flawed. Ofcom noted other recent decisions that it had taken stating that it was entirely proper for the parties themselves to settle ambiguity about editorial responsibility by contract so long as this did not frustrate the purposes of the Act or of the Directive. In this case, ATVOD had not sufficiently addressed whether contractual provisions purporting to allocate regulatory responsibilities between the parties settled the ambiguity as to the allocation of editorial responsibility. Nor had it properly applied its own Guidance, which merely provides a guide to the approach it is likely to take but is not legally binding. Ofcom however decided to remit the decision for ATVOD to take it again, rather than simply substituting its own decision, as ATVOD is the appropriate authority to decide in the light of Ofcom's earlier decisions.

Ofcom, 'Appeal by BSkyB Against a Notice of Determination by ATVOD', published on 12 July 2012

© European Audiovisual Observatory (Council of Europe) 2026

http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/bskyb-appeal.pdf?utm_source=updates&utm_medium=email&utm_campaign=1sttues-atvod-bskyb

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026