[GB] Decision of Co-Regulatory Body on Scope of 'On-demand Programme Service' Overturned

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Ofcom, the UK communications regulator, has overturned a decision of the co-regulatory Authority for Television on Demand (ATVOD) that Channel Flip was an 'on-demand programme service' for the purposes of part 4A of the Communications Act 2003. ATVOD's decision meant that it had to notify ATVOD, pay a fee, and meet a limited number of regulatory requirements. This part of the Act had been added to implement the Audiovisual Media Services Directive. Ofcom had designated ATVOD as the appropriate regulatory authority to carry out functions under this part of the Act, but its decisions were made subject to appeal to Ofcom itself, which can substitute its own decision for that appealed against.

The Act provides that a service is an 'on-demand programme service' if 'its 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.' Channel Flip was a small business with 15 employees; ATVOD decided that the content of some of its audiovisual content was comparable to television comedy programmes, in particular because items had generic opening sequences including a music soundtrack, a linear narrative and plot, and end credits or an end pictorial logo.

To assist in the resolution of this and other appeals, Ofcom commissioned research into consumers' attitudes to different services. Channel Flip marketed itself as 'the UK's finest video shows' and broadcast brief items, normally 3-4 minutes in length but with some of 10 minutes. Some were presented by TV personalities, and some items were arranged into a series. The style was not 'amateur' but the items were professionally made on a limited budget. The research suggested that users considered Channel Flip to be at the lower end of the spectrum of comparability with linear television, and that it felt like a vehicle to sell particular TV personalities. Ofcom considered that, although some of the series shared characteristics with an established genre of linear TV programmes, the items were not so similar as to compete for audience with such services. Users did not consider them to be associated with, or an alternative to, TV programmes. Their short duration made them more comparable to clips on websites such as YouTube. Though some items were more comparable with television programmes, they were not typical of the output as a whole. Ofcom thus decided that the service did not constitute an 'on-demand television service' and allowed the appeal.

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Ofcom: Appeal by ChannelFlip Media Limited, 14 December 2012

http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/Channel_Flip_scope_appeal.pdf?utm_source=updates&utm_medium=email&utm_campaign=atvod-channel-flip

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