

[GB] ATVOD's Rulings on What is a "Video-on-Demand" Service Overturned

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*David Goldberg
deeGee Research/Consultancy*

If a service in the United Kingdom constitutes a "video-on-demand" service, it should so notify ATVOD - the Authority for Video on Demand - so as to come under its regulatory jurisdiction regarding editorial content and pay an annual fee.

Interpreting the criteria in concrete cases is, in the first instance, the responsibility of ATVOD; however, it is the UK regulator Ofcom which has the ultimate legal responsibility and so an appeal lies to it.

VOD criteria (in implementing the Audiovisual Media Services Directive) are retrofitted through the Audiovisual Media Services Regulations 2009 and the Audiovisual Media Services Regulations 2010, as Section 368A of the Communications Act 2003. This defines an On Demand Programme Service (ODPS); one of the main characteristics is that ..."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." (Section 368A(a)).

Two cases involved BBC Worldwide, in respect of the two YouTube channels. One was Top gear and the other BBC Food. (In fact there is a third, involving ODPSs provided by Channel Flip Media Limited, in which Ofcom overturned ATVOD's ruling as well- see IRIS 2013-2/27).

In determining whether a VOD constitutes an ODPS, Ofcom adopts a two-stage test:(i) what is the principal purpose of the service (i.e., is it to provide programme services?) and (ii) the comparability test (is the material sufficiently comparable to television programme services?).

BBC Worldwide argued that, whilst the relevant content was similar to television programme services, it was "in the form of clips of programmes, not programmes in themselves". Clips were of approximately 5 to 8 minutes (and a maximum of 15 minutes) duration whereas, e.g., BBC iPlayer (regulated by ATVOD) presents "full-length" programmes.

Ofcom, however, stressed that its decision (focusing on duration and production quality) is fact-specific, stating "any service would need to be considered on the basis of its relevant characteristics and all the relevant evidence".

Ofcom BBC Food Youtube decision, published on 18 January 2013

http://www.atvod.co.uk/uploads/files/BBC_Food_Appeal_Decision.pdf

Ofcom BBC Top Gear decision, published on 18 January 2013

http://www.atvod.co.uk/uploads/files/Top_Gear_Appeal_Decision.pdf

