

The logo for The Authority for Television On Demand (ATVOD) consists of the letters 'ATVOD' in a bold, white, sans-serif font, centered within a solid black rectangular background.

ATVOD

THE AUTHORITY FOR TELEVISION **ON DEMAND**

**Statement on regulatory fees for
on-demand programme services
for the period
1 April 2014 to 31 March 2015**

Published 13th June 2014

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Section 1

Executive Summary

- 1.1 This is a Statement by the Authority for Television On Demand (“ATVOD”), the body that Ofcom designated (“the Designation”)¹ on 18 March 2010 as the co-regulator for video on demand (“VOD”) editorial content made available on On-Demand Programme Services (“ODPS”). Among the statutory functions designated to ATVOD is requiring Service Providers to pay an annual fee in respect of each service they provide. Such fees are subject to Ofcom’s prior written approval.
- 1.2 The Statement sets out ATVOD’s response to submissions made to its consultation on a proposal for regulatory fees for ODPS for the period 1 April 2014 to 31 March 2015 (“the Consultation”)² and records ATVOD’s decision in relation to the fees to be set with regard to ODPS for the period 1 April 2014 to 31 March 2015 (“2014-15 Fees”). It also sets out Ofcom’s approval of the amount and structure of the 2014-15 Fees since ultimate responsibility for setting regulatory fees for ODPS rests with Ofcom.
- 1.3 A total of 6 submissions were received. Three submissions were from providers of notified ODPS, two were from trade associations representing providers of notified ODPS, and one was from an individual who does not provide an ODPS. In coming to its decision, ATVOD has taken into account the strength and weight of arguments contained in the submissions from stakeholders.

Summary of decision

- 1.4 **Having duly considered and taken account of the responses to the Consultation, and in light of all the information currently available and the relevant legislative provisions, ATVOD has decided to maintain the existing tariff structure and to leave existing fee rates unchanged for a further year.**

Background

- 1.5 On 11 February 2014, in accordance with our statutory duty to consult³ with providers likely to be required to pay a fee during the relevant year, we published the Consultation. In Section 2 of this Statement, we set out the background to the Consultation.

¹ Following a scheduled review in 2012, an Amended Designation was made on 14 September 2012 and can be found at <http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/amended-designation.pdf>

² See <http://www.atvod.co.uk/news-consultations/news-consultationsconsultations/closed-consultations/2014-15-fees>

³ See Section 368NA(5)(c) of the Act.

Stakeholder responses

- 1.6 In Section 3, we set out details of the six responses to the consultation. In summary, these responses:
- indicated support for the proposal to maintain the existing tariff structure and to leave existing fee rates unchanged for a further year (four responses);
 - suggested amendments to the qualifying criteria for the concessionary rates and for the B Rate, and for a reduction in the B Rate tariff (one response); and
 - suggested that ATVOD has no lawful authority to require the payment of any fee (one response).

ATVOD's response and decision

- 1.7 In Section 4, we set out ATVOD's response to the submissions made to the Consultation, and the reasons for our decision.
- 1.8 The 2014-15 Fee Tariff is published as Annex 2. This includes a table setting out the rates that apply in each band, details of the temporary waiver for new services from providers who qualify for a concessionary rate, and confirmation of the ability to pay in four instalments for providers who qualify for a concessionary rate or for Rate B. We also set out the procedure by which service providers can apply for rates below the Super A Rate and the evidence required in support of such applications.

Ofcom's approval of the fees

- 1.9 In Section 5, we set out Ofcom's approval of the 2014-15 Fees, as required by the Designation, Ofcom having ultimate responsibility for setting the amount of the regulatory fees to be paid in any year.

Next steps

- 1.10 In Section 6, we set out the next steps we will take in the process of requiring payment of fees in relation to 2014-15.

Section 2

Background

- 2.1 This is a Statement by the Authority for Television On Demand (“ATVOD”), the body that Ofcom designated (“the Designation”)⁴ on 18 March 2010 as the co-regulator for video on demand (“VOD”) editorial content made available on On-Demand Programme Services (“ODPS”).
- 2.2 ATVOD has been designated various statutory functions in relation to the regulation of ODPS including requiring Service Providers to pay an annual fee in respect of each service they provide. Such fees are subject to Ofcom’s prior written approval. Under the Communications Act 2003 (as amended) (“the Act”)⁵ the fees set must represent the appropriate contribution of the provider towards meeting the estimated costs⁶ to be incurred in the relevant year⁷ and be justifiable and proportionate having regard to the provider who will be required to pay it and the functions in respect of which it is imposed⁸.
- 2.3 The Statement sets out ATVOD’s response to submissions made to our consultation on a proposal for regulatory fees for ODPS for the period 1 April 2014 to 31 March 2015 (“the Consultation”)⁹ and records our decision in relation to the fees to be set with regard to ODPS for that period (“2014-15 Fees”).
- 2.4 The Statement also sets out Ofcom’s approval of the 2014-15 Fees, as ultimate responsibility for the setting of regulatory fees for ODPS for any year rests with Ofcom.
- 2.5 The legislative and regulatory background to the setting of these regulatory fees and the factors affecting tariff levels are set out in full in the Consultation¹⁰.
- 2.6 The proposal set out in the Consultation was to maintain the existing tariff structure and to leave existing fee rates unchanged for a further year (“the Proposal”).
- 2.7 In this document we:

⁴ Following a scheduled review in 2012, an Amended Designation was made on 14 September 2012 and can be found at <http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/amended-designation.pdf>

⁵ Annex 1 lays out the legal framework relating to the relevant statutory provisions in relation to the setting of fees.

⁶ As well as ATVOD’s estimated costs, the likely costs also reflect an estimated amount of Ofcom’s costs for the year; and the functions in respect of which fees are imposed include both functions delegated to ATVOD and the functions retained by Ofcom.

⁷ See Section 368NA(3)(a) of the Act.

⁸ See Section 368NA(3)(b) of the Act.

⁹ See <http://www.atvod.co.uk/news-consultations/news-consultationsconsultations/closed-consultations/2014-15-fees>

¹⁰ As above

- set out stakeholders' views on our proposal for the 2014-15 Fees to be paid by ODPS providers and on a range of factors that have a bearing on those fees (Section 3);
- set out our response to the views of stakeholders and our decision in relation to the 2014-15 Fees (Section 4);
- set out the tariff for 2014-15 Fees (Annex 2);
- set out Ofcom's approval of the 2014-15 Fees (Section 5); and
- set out the next steps we will take in the process of requiring payment of fees in relation to 2014-15 (Section 6).

Section 3

Stakeholder Responses

- 3.1 In this section we provide information on the responses received to the 2014-15 Fees Consultation.
- 3.2 Six responses were received and accepted. This compares with 13 in 2013-14, 19 in 2012-13 and 26 in 2011-12.
- 3.3 Of these six responses, three were from a provider of a notified service (including one joint response) and two were from trade associations to which a provider of a notified service was affiliated. The remaining response was from an individual who did not provide an ODPS.

- 3.4 The respondents were:

Bill Penn (individual response)

Channel 5 Broadcasting Ltd

Commercial Broadcasters Association (COBA)*

Local Television Network Limited (“LTVN”)**

Portland Broadcasting Ltd / RHF Productions Ltd (joint response)

UTV Television

*COBA represents commercial broadcasters, including the following providers of ODPS: Discovery, Sky, Sony Pictures Television, The Walt Disney Company, A + E Networks, Viacom, Turner, Scripps Networks and NBC Universal.

** LTVN represents holders of local digital television programme service licences, including the following providers of ODPS: Northern Visions, Channel 7, ESTV, Bay TV Liverpool and Mustard TV.

Question 1: Do you have any comments on the estimated 2013-14 Costs?

- 3.5 Of the three service providers who commented, Channel 5 was *“pleased that once again the costs of running ATVOD have proved less than had been predicted”* and COBA welcomed *“ATVOD’s ongoing efforts to keep its costs to an appropriate level”* and supported ATVOD’s public policy work on developing child protection proposals. COBA would however *“welcome more opportunities for engagement in ATVOD’s policy development process, including the ability to input during the drafting of ATVOD submissions and responses to public reviews.”*
- 3.6 Mr Penn pointed to the cost of remuneration to the ATVOD CEO and Board members, and suggested that ATVOD is trading insolvently.

Question 2: Do you have any comments on the Estimated 2013-14 Income?

3.7 Two respondents commented on this point. While Channel 5 supported the estimates, Mr Penn suggested that “ATVOD’s income in 2013-14 was collected unlawfully pursuant to ultra vires delegated legislation” and thereby incurred liability.

Question 3: Do you have any comments on the Estimated Surplus?

3.8 Channel 5 agreed that “it is prudent to retain a surplus as a dedicated reserve as stated”.

Question 4: Do you have any comments on the Estimated 2014-15 Costs?

3.9 Three respondents gave comments. Channel 5 agreed that some increase in ATVOD’s running costs can be justified. COBA also supported the costs, including that for an additional case officer, but suggested that in future “ATVOD should monitor whether costs associated with handling complaints related purely to adult services do not become disproportionate.”

3.10 LTVN expressed disappointment that ATVOD’s fees consultation does not contain a separate impact assessment or substantive cost benefit analysis of any of its proposals.

Question 5: Do you have any comments on the aggregate amount of fees required in 2014-15?

3.11 One respondent (COBA) commented, giving support for maintaining fees at current rates. In its response to Q8, Channel 5 also commented that the “fee levels proposed are clearly necessary to fund ATVOD’s work”.

Question 6: Do you have any comments on our estimate of the number and characteristics of services likely to be notified in 2014-15?

3.12 Two respondents commented on this point. While Channel 5 supported the estimates, LTVN suggested that ATVOD does not take into account the introduction of local digital television programme service (‘L-DTPS’) licensing in its estimate. LTVN went on to suggest that its proposals regarding fees for L-DTPS (see below) would not affect ATVOD’s ability to carry out its designated functions.

Question 7: Do you support the proposal for the 2014-15 Fees?

3.13 Of the six respondents, four (COBA, Channel 5, UTV and Portland / RHF) fully supported the proposal, with Channel 5 calling it “measured and sensible”. LTVN suggested specific amendments to the proposal as outlined below. Bill Penn did not comment on this question.

Question 8: Do you have any comments on the proposal for the 2014-15 Fees?

- 3.14 Those fully supporting the proposal expanded on their support. All four supported the maintenance of the existing fees and fee structure, with Channel 5 suggesting that this is in the interests of *“fairness and stability”* as the current fee structure is *“clear, well understood within the industry, and an improvement on the fee regimes in existence in ATVOD’s first three years”*. COBA supported the maintenance of the group cap and the ability to include multiple outlets under a single notification, believing these features to be *“important in ensuring that the regulatory costs and administrative burden for industry are not disproportionate”*. COBA also commented that *“the current, tiered tariff structure allows smaller services to develop, while ensuring that larger ones do not pay a disproportionate amount in fees.”*
- 3.15 LTVN put forward proposals for significant changes to the lower end of the fee structure, suggesting that the non-commercial concessionary rate should apply to all L-DTPS licence holders (whether for-profit or not-for-profit). LTVN felt that ATVOD should recognise the particular circumstances of L-DTPS licence holders which (whether profit making or not) provide an important public service targeted at a single town or city, compared with a typical commercial ODPS. LTVN felt that the ATVOD fees for commercial entities may present a material disincentive to invest in ODPS for some L-DTPS licence holders. LTVN commented that *“just as the Government has sought to address the barriers which have prevented local TV emerging, ATVOD should ensure that its fee structure does not cause damage to ultra-local services selected and licensed by Ofcom to meet public service objectives.”*
- 3.16 LTVN further felt that the current ATVOD notification fee for a small business is *“damagingly high”* for those with the lowest turnover eligible for Rate B (£100,000), and that therefore the B Rate should be reduced to no more than £500 for multiple outlets and the commercial concessionary rates should be extended *“to all ODPS providers with a turnover from all corporate trading of no less than £0.5m”* [given the context, ATVOD assumes that LTVN meant here no *more* than £0.5m]. LTVN further requested that ATVOD *“urgently review the definition of ‘affiliation’ to a larger corporate entity [...] so that companies with a minority shareholder are not denied a fair and proportionate fee”* and that *“a revised definition of ‘affiliation’, based on consolidated group turnover, should be consistently applied to all ATVOD fees to avoid circumvention of any tariff”*.
- 3.17 The individual respondent, Mr Penn, suggested that *“ATVOD has no lawful authority to require the payment of any fee to be regulated from anyone”* as the ATVOD fees constitute *“[t]axation without Parliament”*, and that therefore those who have paid such fees are entitled to restitution with interest.

Question 9: Do you believe our proposals have any impacts in relation to matters of equality?

- 3.18 No respondents raised any issues in this regard.

Section 4

ATVOD's response and decision

4.1 In this section we give ATVOD's response to the issues raised and comments made in the six responses to the consultation. In doing so we note that the vast majority of service providers did not express a view (whether directly or through a trade association) on the Proposal set out in the Consultation.

Question 1: Do you have any comments on the Estimated 2013-14 Costs?

4.2 ATVOD notes that only three respondents commented directly on the estimate of the costs of carrying out the designated functions in 2013-14 and that, of those that did, two made positive comments, welcoming the anticipated under-spend.

4.3 We also note the comments of one respondent, who is not a provider of an ODPS, in relation to the remuneration costs relating to the Chief Executive, the Chair and other Independent Board Members. ATVOD rejects entirely the suggestion from the same respondent that ATVOD is trading insolvently.

4.4 In the Consultation, ATVOD set out an estimate of its 2013-14 costs based on the information available at that time. Below ATVOD sets out a revised estimate based on the best information currently available. Our current estimate of **£511,022¹¹** is higher than that estimated in the Consultation, but £42,028 lower than the £553,050 estimated in the Statement on 2013-14 Fees published on 23 May 2013. It is made up as follows:

Ofcom's recouped costs	£20,883
Remuneration for staff & Board Members	£333,516
Rent and office running costs	£23,854
Travel and other expenses (Executive and Board)	£6,261
Professional fees	£71,714
Insurance and bank charges	£5,834
Independent complaints adjudicator	£0
Recruitment	£845
IT hardware and support	£7,190
Contingency – fee shortfall /bad debt	- £7,889

¹¹ This estimate is based on accounts which are yet to be audited

Industry Forum meeting costs	£1,154
ParentPort	£1,055
Research	£4,360
Website revisions for new notification requirements	£10,893
Development of extranet facility for online notifications	£19,884
Development of new database and running costs	£11,342
Corporation tax ¹²	£127
Total	£511,022

4.5 The main reasons for the estimate being lower than that set out in the 2013-14 Fees Statement are that:

- the sum of £12,000 originally budgeted in relation to bad debts and a possible shortfall in fees is likely to be significantly under spent, not least as a result of ATVOD's effective fee recovery activity. In addition, following a successful scope appeal, a credit note was issued in relation to an invoice raised in 2011-12. As a doubtful debt provision had been made during a previous financial year when the appeal was originally lodged, a balancing adjustment to this year's provision has been made which is expected to result in negative net expenditure (ie a surplus) for this budgetary item;
- staff and Board remuneration costs were lower than estimated, primarily due to one staff post and one independent Board member position being unfilled for short periods;
- professional fees were lower than estimated, especially in relation to legal advice;
- some planned expenditure on IT hardware was postponed until 2014-15
- development and running costs of the new database came in under budget.
- transferring hosting and support arrangements for the ParentPort website (which is funded jointly by UK media regulators) to a new provider at the end of 2012-13 resulted in lower funding costs for ATVOD in 2013-14.

4.6 In accordance with section 368NA(6) of the Act, we expect to publish the statement of actual costs incurred in respect of the Year 2013-14, when we publish our 2014 Annual Report.

¹² A Corporation tax liability arose in relation to interest earned on Treasury Deposits during the previous financial year. The interest is set out in the section dealing with 2013-14 income.

Question 2: Do you have any comments on the Estimated 2013-14 Income?

- 4.7 ATVOD notes that the only comments received with the regard to the estimate were a statement of support and an assertion that the income was collected unlawfully.
- 4.8 ATVOD rejects entirely the suggestion that its fees were collected unlawfully. The fees were collected in accordance with the powers conferred on ATVOD by its Designation and in accordance with the tariff approved by Ofcom. The relevant legislative background was set out in Annex 1 of the Consultation.
- 4.9 The estimate of £502,520 set out in the Consultation was based on the knowledge available at the time the Consultation document was drafted. Since that time, further notifications have been received and the aggregate amount of fees expected to be received is higher than was projected. In addition ATVOD has received further interest income from funds held on deposit. ATVOD is therefore revising upwards its Estimated 2013-14 Income to **£508,244**. This is made up as follows:

Estimated Fee Income	£507,378
Other income	£ 866
Total	£508,244

- 4.10 In accordance with section 368NA(6)(a) and section 368NA(6)(b) of the Act, ATVOD will publish a statement setting out (a) the aggregate amount of fees received during 2013-14, and (b) the aggregate amount outstanding and likely to be paid or recovered in the Annual Report it expects to publish before the end of July 2014.

Question 3: Do you have any comments on the Estimated Surplus?

- 4.11 In the Consultation, ATVOD projected that there would be an in-year deficit of £1,579 for 2013-14 which would result in an accumulated surplus of £142,815, of which £89,635 was retained as a dedicated reserve. ATVOD notes that there was only one comment in relation to the Estimated Surplus and that this noted that it was prudent to retain a dedicated reserve as planned.
- 4.12 In accordance with the revised Estimated 2013-14 Costs and the revised Estimated 2013-14 Income, ATVOD is revising upwards its estimate of its in-year deficit to **£2,783**. A corresponding adjustment has been made to our estimate of the accumulated surplus as at 31 March 2014 (“the Estimated Surplus”) which is now **£141,611**.
- 4.13 With regard to the Estimated Surplus ATVOD has decided that:
- **£89,635** should remain allocated to a dedicated reserve held against the risk of unplanned costs in relation to (a) winding up the organisation (for example in response to changes in the legislative framework), or (b) a substantive legal challenge, such as a Judicial Review; and

- **£51,976** should be carried forward to 2014-15 and used to offset the aggregate amount of fees required during that year

4.14 In calculating the size of the reserve we have had regard to the actual costs likely to be involved in the two risk scenarios identified. Such costs are not directly related to ATVOD's turnover or budget, and we would therefore not seek to maintain a reserve at a set % of budget or turnover.

Question 4: Do you have any comments on the Estimated 2014-15 Costs?

4.15 ATVOD notes that, of the three respondents who commented on this question, two were supportive of the estimated costs. With regard to the suggestion that ATVOD should monitor whether in future the costs associated with handling complaints relating purely to adult services become disproportionate, ATVOD notes that its regulatory activity is aimed at encouraging pro-active compliance across all sectors of the regulated industry, including the adult sector. To that end we intend to run a further free seminar for providers of adult services designed to ensure that they fully understand their statutory obligations and the potential consequences of failing to meet them. However, where complaints about non-compliance are received these must be investigated properly.

4.16 ATVOD also notes the disappointment expressed by one respondent in relation to the lack of a separate impact assessment or "*substantive cost benefit analysis*" in the Consultation. As set out in paras 2.11 to 2.13 of the consultation document, rather than including a separate impact assessment, the Consultation as a whole was designed to assess the impact of the proposal on stakeholders, and in particular on ODPS providers. The Proposal was informed by the information provided to us by a range of industry stakeholders and the Consultation invited comments on the potential impacts of the Proposal.

4.17 In preparing the Consultation, ATVOD also had due regard to any potential impacts the proposal may have on equality in relation to gender, disability or ethnicity (whether in Northern Ireland or the rest of the UK) and we invited specific comments on that issue (see Question 9, below).

4.18 Overall, having taken account of the strength and weight of arguments expressed in the responses, ATVOD has decided to confirm the Estimated 2014-15 Costs as set out in the Consultation. The Estimated 2014-15 Costs are therefore **£562,372**. This is made up as follows:

Ofcom's recouped costs	£22,000
Remuneration for staff & Board Members	£379,920
Rent and office running costs	£27,300

Travel and other expenses (Executive and Board)	£5,500
Professional fees	£80,000
Insurance and bank charges	£7,052
Independent complaints adjudicator	£500
Recruitment	£1,600
IT hardware and support	£19,500
Contingency – fee shortfall /bad debt	£12,000
Industry Forum meeting costs	£1,000
ParentPort	£1,000
Research	£5,000
Total	£562,372

Question 5: Do you have any comments on the aggregate amount of fees required in 2014-15?

4.19 ATVOD notes that both comments on this question were supportive of the position set out in the Consultation. ATVOD confirms that the aggregate amount of fees required in 2014-15 will be equal to the Estimated 2014-15 Costs (£562,372) minus the portion of the Estimated Surplus which has not been allocated to a dedicated reserve (£51,976). The aggregate amount of fees required in 2014-15 will therefore be **£510,396**.

Question 6: Do you have any comments on our estimate of the number and characteristics of services likely to be notified in 2014-15 ?

4.20 ATVOD notes that there were comments from just two respondents on this question, one of which supported the estimate. ATVOD rejects the suggestion made by LTVN that the estimate did not take into account the introduction of local digital television programme service licensing. ATVOD took account of this and other relevant developments in concluding that the best guide to the number and characteristics of services likely to be liable to pay a fee during 2014-15 was:

- The number and nature of services currently notified to ATVOD
- The known characteristics of the providers of those services, especially in relation to turnover and qualification for consideration as a group

- Recent trends in new notifications (including from providers who hold an L-DTPS licence)
- Recent trends in services ceasing to be provided or being subsumed within a broader service

4.21 Based on the information currently available, ATVOD confirms its estimate that the number of services notified to ATVOD as being provided in the Year 2014-15 will be 122 and that the new services notified to ATVOD during that year will broadly match the characteristics of the services notified for the first time in 2013-14.

Question 7: Do you support the proposal for the 2014-15 Fees

4.22 ATVOD notes that of the five responses which addressed this question, four supported the proposal and one suggested specific amendments which are dealt with under Question 8 below.

Question 8: Do you have any comments on the proposal for the 2014-15 Fees

4.23 ATVOD notes the value placed by respondents on maintaining the existing fees and fee structure for reasons of fairness, stability, clarity, understanding and proportionality.

4.24 ATVOD has considered carefully the suggestion from LTVN that the Non-Commercial Concessionary Rate should be granted automatically to any provider who holds an L-DTPS licence (regardless of whether that provider is operating on a for-profit or a not-for-profit basis). ATVOD does not agree that this would be appropriate. As we noted in para 5.6 of the Consultation, the Non-Commercial Concessionary Rate is designed to offer subsidised rates for non-commercial service providers. Under the ATVOD proposal, an L-DTPS licence holder who also provides an ODPS will qualify for that rate if they are a registered charity or a community interest company or a not-for-profit company operating in the public interest (as demonstrated, for example, in their articles of association). We are not persuaded that a for-profit company should benefit from such a subsidised rate for its VOD service merely on the grounds that it also provides a separate linear TV service under the terms of an L-DTPS licence. In coming to this view we note that other public service broadcasters pay standard rate ATVOD fees and that an L-DTPS licence holder which has a turnover of less than £100,000, or which is in its first year of trading and expects to have a turnover below that threshold, will in any case benefit from the subsidised rates offered to small scale providers (or, if turnover is below £50,000, the subsidised rate made available to micro-scale providers).

4.25 In relation to the LTVN proposal that the Multiple Outlet B Rate should be reduced to no more than £500, ATVOD is not persuaded that the fee set out in the ATVOD proposal (£771) is “*damagingly high*” as claimed by LTVN. Those qualifying for the B Rate have been subject to fees in the range £771- £800 since 2011 and ATVOD has seen no evidence of fees at such a level providing a significant disincentive to

providing a VOD service. Taking the range of providers into account, and the fees charged in the other tariff bands, ATVOD considers that £771 remains justifiable and proportionate having regard to the provider who will be required to pay it and the functions in respect of which it is imposed.

- 4.26 ATVOD has also considered carefully the LTVN suggestion that the qualification for the commercial concessionary rates should be amended so that any provider with a turnover of no more than £500,000 would qualify, and that the definition of 'affiliation' be amended (providers who have an affiliation to a larger corporate entity are ineligible for commercial concessionary rates). ATVOD does not consider that such changes would be appropriate. As we noted in para 5.6 of the Consultation, the commercial concessionary rates are designed to offer subsidised rates for service providers whose turnover is so small that paying the B Rate would inhibit them from providing a new ODPS or prevent them from continuing to provide an existing ODPS. We are not persuaded that a provider with a turnover of between £100,000 and £500,000, or with an affiliation (as currently defined) to a larger company, would be so inhibited or prevented by a fee of £771. In addition, we are mindful that: any adjustment to one part of the banding structure would have knock-on effects for the other parts of the banding structure; such knock-on impacts would be uncertain (as companies with turnover below £6.5m do not have to report turnover figures in their financial statements); there is an absence of evidence of widespread concern with the existing structure; and there is an absence of evidence that a viable alternative structure would enjoy greater support from the broad spectrum of service providers.
- 4.27 As noted under Question 2 above, we reject entirely the assertion made by one respondent that ATVOD has no lawful authority to require the payment of fees. ATVOD charges fees in accordance with the powers conferred on ATVOD by its Designation and in accordance with a tariff approved by Ofcom. The relevant legislative background was set out in Annex 1 of the Consultation.

Question 9: Do you believe our proposals have any impacts in relation to matters of equality?

- 4.28 ATVOD notes that none of the responses raised concerns that the Proposal was likely to have a direct bearing on equality in relation to gender, disability or ethnicity. We therefore confirm our view that our approach to regulation as a result of adopting the Proposal would remain unchanged and therefore we do not consider that the adoption of the Proposal would have any particular implications for people to whom these considerations apply. We base this conclusion on the experience gained by ATVOD in regulating the sector to date.

Decision

- 4.29 **Having duly considered and taken account of the responses to the 2014-15 Fees Consultation, and in light of all the information currently available and the relevant legislative provisions, ATVOD has therefore decided to maintain the existing tariff structure and to leave existing fee rates unchanged for 2014-15.**

- 4.30 The 2014-15 Fee Tariff is set out in Annex 2 and includes full details of the qualification criteria for each band and rate or for consideration as group. ATVOD considers that the fees set out in the 2014-15 Fee Tariff meet the requirements to be appropriate, justified and proportionate for the reasons set out below.
- 4.31 The banding structure contained in the 2014-15 Fee Tariff formed the basis of the fee tariffs approved by Ofcom for 2011-12, 2012-13 and 2013-14 after public consultation. The qualification criteria for each band are also unchanged in the 2014-15 Fee Tariff. We therefore consider that, in the absence of any evidence to the contrary, and in the absence of significant stakeholder concern about the structure, ATVOD and Ofcom's assessment that the banding structure was appropriate, justified and proportionate in the three previous years remains valid.
- 4.32 Within that banding structure, the fees vary according to whether the service operates through a single outlet or through multiple outlets. This element of the fee tariff was first introduced for 2013-14 following a public consultation. Prior to the Consultation on 2014-15 Fees, each provider of a notified service was invited to bring to ATVOD's attention any particular difficulties posed by that element of the fee structure. No such difficulties were identified. None of the responses to the Consultation raised any issues in relation to that element of the fee structure.
- 4.33 In terms of the actual fees proposed, we consider that the fees charged within each band are appropriate, justified and proportionate, not least because they are set at the same level as the fees approved by Ofcom as appropriate, justified and proportionate in 2013-14.
- 4.34 ATVOD considers that the 2014-15 Fee Tariff will generate aggregate fee income which is sufficient to meet, but not exceed, the anticipated costs of performing the designated functions using our knowledge of the turnover of each notified service provider and our knowledge of the number of 'outlets' through which each service provider currently provides its service(s). In making our calculations we have also assumed that a number of additional services will be notified during 2014-15. Our calculations also take into account the fact that three groups currently benefit from the group cap.
- 4.35 Having duly considered and taken account of the responses to the 2014-14 Fees Consultation, and in light of all the information currently available and the relevant legislative provisions ATVOD has also decided that:
- while no provision has been made for 2014-15, the possibility of remunerating a Non-Independent Director in future years, in order to attract candidates from smaller service providers to the ATVOD Board, should be discussed further with stakeholders through the Industry Forum during the coming year; and
 - the possibility of introducing an early payment discount in 2015-16 should be further investigated during the coming year, including through discussion with the Industry Forum.

Section 5

Ofcom's approval of the fees

- 5.1 Ofcom formally designated¹³ ATVOD as a co-regulator to carry out a range of functions in relation to the regulation of VOD services. Included in the designated functions was the power to require Service Providers to pay an annual fee, such fees to be set in accordance with section 368NA of the Act. The fees must represent the appropriate contribution of the provider towards meeting the likely costs of regulation during the year and be justifiable and proportionate having regard to the provider who will be required to pay it and the functions in respect of which it is imposed.
- 5.2 A different level of fees may be required in relation to different cases or circumstances but the aggregate amount of fees required to be paid must be sufficient to meet, though not exceed, the estimated likely costs of carrying out the regulatory functions during the year. Under the Designation any fees that ATVOD requires ODPS providers to pay, are subject to Ofcom's prior written approval¹⁴.
- 5.3 Accordingly, ATVOD has sought Ofcom's approval in relation to the fees to be paid in 2014-15 (1 April 2014 to 31 March 2015). Ofcom has therefore reviewed the amount and structure of the fees and associated reasoning set out in Sections 4 and Annex 2 of this Statement by reference to the statutory requirements set out in Section 368NA of the Act. In particular, in deciding whether to give its approval, Ofcom must be satisfied that the fee in each case "represents the appropriate contribution of the provider towards meeting the likely costs" of regulation¹⁵; and "is justifiable and proportionate having regard to the provider who will be required to pay it and the functions in respect of which it is imposed"¹⁶.
- 5.4 Ofcom must also be satisfied that the aggregate amount of the fees to be paid is sufficient to meet, but not exceed the likely costs of carrying out the regulatory functions during 2014-15, taking into account any deficit or surplus carried forward from the previous year(s)¹⁷. Ofcom has therefore considered this requirement in light of the financial details contained in paragraph 4.18 above which include both ATVOD's estimated costs for 2014-15 and Ofcom's own current estimate of likely costs for carrying out its non-designated functions in 2014-15 (the latter being in the sum of £22,000).
- 5.5 In addition, Ofcom has also taken into account the £2,782 deficit which ATVOD has estimated will arise from 2013-14 (see paragraph 4.12 above), having taken into

¹³ Following a scheduled review in 2012, an Amended Designation was made on 14 September 2012 and can be found at <http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/amended-designation.pdf>

¹⁴ See Clause 5(iii) of the Designation.

¹⁵ See Section 368NA(3)(a) of the Act.

¹⁶ See Section 368NA(3)(b) of the Act.

¹⁷ Section 368NA(7) of the Act states: "Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (6) is to be—

(a) carried forward; and

(b) taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (5)(b) in relation to the following year".

account both ATVOD's estimated costs (in 2013-14) and an amount of costs incurred by Ofcom in 2013-14 in the sum of £20,883 (see paragraph 4.4 above), which deficit is to be carried forward in assessing whether the requirement is met that the aggregate amount of the fees to be paid in 2014-15 is sufficient to meet, but not exceed the likely costs of carrying out the regulatory functions during 2014-15¹⁸. In 2014-15, Ofcom will carry out a range of functions concerning the regulation of ODPSs. We have provided an estimate of £22,000 as the projected cost of carrying out these functions. Ofcom's functions in 2014-15 will include in particular a number of appeals on whether a service is or is not an ODPS. However since the exact nature and volume of this work are currently unknown, the likely costs cannot be estimated with any certainty at this time. Ofcom has taken into account ATVOD's decision to allocate part of the accumulated surplus to a dedicate reserve held against the risk of ATVOD incurring extraordinary costs relating to a decision to wind up the organisation or to a significant legal challenge, such as a Judicial Review.

- 5.6 Having considered all these matters, Ofcom has approved ATVOD's decision as to the amount and structure of the fees set for 2014-15 and the associated reasoning set out in sections 4 and Annex 2 of this Statement.

¹⁸ Under section 368NA(6)(c) of the Act, as soon as reasonably practicable after the end of the financial year, a statement must be published setting out for that year, the aggregate amount received in fees during that year, the aggregate amount of fees outstanding and likely to be paid or recovered for that year, and the actual costs of carrying out the relevant functions during the year. Any deficit or surplus shown is to be carried forward and taken into account in determining what is required to ensure that the aggregate amount of fees that are required to be paid during that year is sufficient to enable them to meet, but not exceed the estimated costs for that year. ATVOD will publish a statement setting out the actual costs of performing the designated functions, as well as Ofcom's actual costs for performing the non-designated functions as backstop regulator, in the Annual Report ATVOD expects to publish before the end of July 2014.

Section 6

Next steps

- 6.1 ATVOD will shortly contact each provider of a notified service in writing to inform them of the fee tariff for 2014-15.
- 6.2 The correspondence from ATVOD will invite those who may qualify for a rate below the Super A Rate to apply for a lower rate. The deadline for applying for a rate lower than Super A will be 21 days.
- 6.3 Those eligible for a concessionary rate or for Rate B will also be offered the opportunity to pay in four instalments.
- 6.4 Service providers who are wholly owned by a parent company which also wholly owns at least one other service provider will be invited to consider whether they wish to be considered on the basis of group turnover for banding purposes in order to qualify for the cap of £25,000 being applied at group level. The deadline for applying for consideration as a group will be 21 days.
- 6.5 Invoices will be issued as soon as possible after the 21 day deadline has expired. Those who have not submitted an application for a lower rate, or whose applications have been declined, will be invoiced at the Super A Rate.

Looking forward

- 6.6 During 2014-15 ATVOD will further explore with stakeholders through the Industry Forum:
 - the possibility of remunerating a Non-Independent Director in future years, in order to attract candidates from smaller service providers to the ATVOD Board; and
 - the possibility of introducing an early payment discount in 2015-16.
- 6.7 In line with the views expressed by stakeholders at the Industry Forum, the Fees Working Party will continue to adopt a 'watching brief' with a view to audience measurement and will not actively develop a proposal for an audience based fee structure until and unless an industry-recognised cross-platform means of accurately measuring ODPS audiences has emerged.