



## **Designation pursuant to section 368B of the Communications Act 2003 of functions to the Association for Television On-Demand in relation to the regulation of on-demand programme services**

### **WHEREAS:**

- (1) Section 368B(2) and (3) of the Communications Act 2003 ('the Act') confers functions on the Office of Communications ('Ofcom') for the regulation of on-demand programme services following the coming into force of the Audiovisual Media Services Regulations 2009 ("the 2009 Regulations")<sup>1</sup> and the Audiovisual Media Services Regulations 2010 ("the 2010 Regulations")<sup>2</sup>;
- (2) Section 368B(1) of the Act confers a power on Ofcom to designate any body corporate satisfying the criteria set out in section 368B(9) to be, to the extent provided by the designation, the appropriate regulatory authority for the purposes of any provision of Part 4A of the Act;
- (3) Ofcom has, by way of a consultation document entitled Proposals for the Regulation of Video on Demand Services published on 14 September 2009<sup>3</sup>, proposed to designate certain of its functions in relation to the regulation of on-demand programme services to a body known as The Association for Television On-Demand Limited (Registered number 05137314) ('ATVOD');
- (4) Ofcom, in making this Designation, has duly considered and taken into account all the responses to that consultation document, as set out in Ofcom's statement published on 18 December 2009<sup>4</sup>;
- (5) Ofcom is satisfied on the basis of ATVOD's written undertakings to Ofcom, dated 17 March 2010 and annexed to this Designation, and on the basis of the relevant information provided to it, including ATVOD's proposal to be designated as the co-regulator for video on-demand

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<sup>1</sup> SI 2009/2979

<sup>2</sup> SI 2010/419

<sup>3</sup> <http://www.ofcom.org.uk/consult/condocs/vod/vod.pdf>

<sup>4</sup> <http://www.ofcom.org.uk/consult/condocs/vod/statement/vodstatement.pdf>

editorial content (attached as Annex 7 to Ofcom's September consultation<sup>5</sup>); ATVOD's acceptance of a loan (provisional on designation by Ofcom) from the Department of Culture, Media and Sport ("DCMS") to assist ATVOD in meeting the costs of regulating VOD editorial services; and the information contained in ATVOD's financial plan for the period up to March 2011, that:

- (i) ATVOD is a fit and proper body to be so designated;
  - (ii) ATVOD will ensure, in performing any function to which this Designation relates, that it takes all appropriate steps to comply with the statutory and regulatory obligations that apply to Ofcom in performing its regulatory functions, including in particular:
    - a. to have regard in all cases to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and to such of the matters in section 3(4) of the Act as appear to be relevant to it in the circumstances;
    - b. to consult and carry out impact assessments in relation to the carrying out of the Designated Functions in circumstances where Ofcom would be required to do so to comply with section 7 of the Act; and
    - c. to comply and secure that its staff comply with section 393 of the Act (confidentiality);
  - (iii) ATVOD has access to financial resources that are adequate to ensure the effective performance of the designated functions;
  - (iv) ATVOD is sufficiently independent of providers of on-demand programme services; and
  - (v) ATVOD has consented to being so designated; and
- (6) Ofcom is satisfied that in making this Designation it has acted in accordance with its duties under the Act.

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<sup>5</sup> Ibid

**NOW THEREFORE BY VIRTUE OF PART 4A OF THE COMMUNICATIONS ACT 2003, OFCOM HEREBY MAKES THE FOLLOWING DESIGNATION:**

1. Ofcom in exercise of the powers conferred on it under section 368B of the Act hereby designates ATVOD to be the appropriate regulatory authority (as defined in section 368R of the Act) for the purpose of carrying out the functions set out in Paragraph 5 of this Designation in relation to on-demand programme services to the extent provided for, and subject to the Obligations, Conditions and such other circumstances as are described in this Designation (“the Designated Functions”);
2. This Designation incorporates the Schedule and Annex which form part of this Designation for all purposes and includes such variations as may from time to time be made by Ofcom in accordance with Paragraphs 9 and 10 of this Designation.
3. This Designation shall be legally binding and, as Ofcom’s designee, ATVOD shall be liable to Ofcom for any failure to carry out the Designated Functions in accordance with the terms of this Designation.

**Interpretation of terms**

4. The following terms referred to in this Designation shall have the following meanings:
  - (i) ‘Designated Functions’ has the meaning given to it in Paragraph 1 of this Designation;
  - (ii) ‘relevant requirements of the Act’ means the requirements set out in section 368D of the Act and includes the requirements set out in section 368E (except insofar as those requirements relate to advertising), section 368G, section 368H and section 368O of the Act;
  - (iii) ‘Service Provider’ means a provider of an on-demand programme service;
  - (iv) for the purposes of this Designation, a ‘programme’ is included in an on-demand programme service if it is included in the range of programmes the service offers to users in accordance with section 368R(2) of the Act; and
  - (v) other terms and expressions used in this Designation shall have the meanings given to them in the Act.

## **The Designated Functions**

5. Ofcom designates ATVOD to carry out the following functions:
- (i) to administer procedures for receiving, and to receive, advance notifications under section 368BA of the Act from every person who intends to provide an on-demand programme service (or, in the case of any person already providing an on-demand programme service on the date that the 2010 Regulations come into force, a notice stating that they are already providing the service);
  - (ii) to determine whether Service Providers have complied with section 368BA and the relevant requirements of the Act in accordance with Paragraph 6(ii) of this Designation;
  - (iii) to require Service Providers to pay a fee in accordance with section 368NA of the Act; such fees to be sufficient to enable ATVOD to meet, but not exceed, their costs estimated under section 368NA(5)(a) of the Act and to be subject to Ofcom's prior written approval;
  - (iv) in accordance with section 368C(1) of the Act, to take such steps as appear to them best calculated to secure that the relevant requirements of the Act are complied with by Service Providers;
  - (v) to encourage Service Providers to ensure that their services are progressively made more accessible to people with disabilities affecting their sight or hearing or both (section 368C(2) of the Act); and
  - (vi) to ensure that Service Providers promote, where practicable and by appropriate means, production of and access to European works (within the meaning given in Article 1 (n) of the Audiovisual Media Services Directive ('the Directive') (section 368C(3) of the Act).

## **Powers**

6. In carrying out the Designated Functions ATVOD shall exercise the following Powers in accordance with the Obligations and Conditions set out in Paragraph 7 of this Designation:
- (i) to prepare and to publish procedures for receiving advance notifications under section 368BA of the Act from every person who intends to provide an on-demand programme service (or, in the case of any person already providing an on-demand programme service on the date that the

2010 Regulations come into force, a notice stating that they are already providing the service);

- (ii) subject to Paragraph 6(iii) below, to decide:
  - (a) what constitutes an 'on-demand programme service' in accordance with section 368A of the Act and/or who the provider of that service is; and
  - (b) what constitutes a 'programme included in an on-demand programme service' in accordance with section 368R(2) of the Act,except that any such decision of ATVOD shall be subject to appeal to Ofcom in accordance with Ofcom's relevant procedures;
- (iii) to refer any particular case to Ofcom to decide whether:
  - (a) a service is an on-demand programme service within the meaning of section 368A of the Act and/or who is the provider of that service; and
  - (b) a programme is a 'programme included in an on-demand programme service' in accordance with section 368R(2);
- (iv) to prepare and to publish Rules for the purpose of securing that Service Providers comply with the relevant requirements of the Act, so as to ensure:
  - (a) that Service Providers pay such fee as may be required under section 368NA;
  - (b) that on-demand programme services do not contain any material likely to incite hatred based on race, sex, religion or nationality (section 368E(1) of the Act);
  - (c) that if an on-demand programme service contains material which might seriously impair the physical, mental or moral development of persons under the age of eighteen, the material must be made available in a manner which secures that such persons will not normally see or hear it (section 368E(2) of the Act);
  - (d) that any sponsorship included in an on-demand programme service complies with the requirements of section 368G of the Act;

- (e) that any product placement included in an on-demand programme service is only permitted if it meets the requirements of section 368H of the Act;
  - (f) that Service Providers retain a copy of every programme for at least forty-two days after the day on which the programme ceases to be available for viewing on their service; and
  - (g) that Service Providers comply with any requirement under section 368O (provision of information) and that they co-operate fully with the appropriate regulatory authority for any purpose within section 368O(2) or (3) of the Act;
- (v) to prepare and to publish accompanying guidance as a non-binding aid to interpretation of those Rules;
  - (vi) to demand information (including copies of programmes) from any person who appears to ATVOD to be or have been a Service Provider and to have information that ATVOD requires for a purpose within section 368O(2)(a) and for the purposes of section 368O(3) of the Act, subject to the requirements of sections 368O(4) and (5) having been met;
  - (vii) to determine, following a complaint or otherwise, that a Service Provider is contravening or has contravened any of the relevant requirements of the Act (including, for the avoidance of doubt, the power to determine that a Service Provider has contravened the requirement in section 368BA of the Act to notify provision of an on-demand programme service);
  - (viii) where ATVOD has determined that a Service Provider has contravened the requirement in section 368BA of the Act, to issue an enforcement notification in accordance with section 368BB(1)(a) (except that ATVOD is given no powers under section 368BB(1)(b));
  - (ix) to include in such an enforcement notification a requirement to take all such steps for remedying a contravention of the requirement to notify provision of an on-demand programme service in accordance with section 368BA as may be specified in the notification;
  - (x) (save in cases where Ofcom decides to take enforcement action itself in accordance with its powers under the Act) to enforce compliance with an enforcement notification under s368BB(6) of the Act in civil proceedings:
    - (a) for an injunction;

- (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
  - (c) for any other appropriate remedy or relief;
- (xi) where, other than in relation to a contravention of section 368BA, ATVOD has determined that a Service Provider is contravening or has contravened any of the relevant requirements of the Act, to issue an enforcement notification in accordance with section 368I of the Act (except that ATVOD is given no powers under sections 368I(1)(b), 368I(4)(b), 368I(4)(d) or 368I(9) of the Act);
- (xii) to include in such enforcement notifications one or more of the following requirements:
- (a) to cease providing or restrict access to a specified programme or programmes of a description specified in the enforcement notification;
  - (b) to provide additional information to users of the on-demand programme service prior to the selection of a specified programme by the user for viewing;
  - (c) to publish a correction in the form and place and at the time specified;
  - (d) to publish a statement of ATVOD's findings in the form and place and at the time specified;
- (xiii) (save in cases where Ofcom decides to take enforcement action itself in accordance with its powers under the Act) to enforce compliance with an enforcement notification under s368I(8) of the Act in civil proceedings:
- (a) for an injunction;
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
  - (c) for any other appropriate remedy or relief.
- (xiv) to carry out, commission or support (financially or otherwise) research (section 368B(11) of the Act); and
- (xv) to use any recording, script or transcript provided to ATVOD under or by virtue of any relevant provision of the Act in connection with its

performance of any of the Designated Functions as permitted under section 69(5) of the Copyright, Design and Patents Act 1988 (as inserted by Regulation 12(2)(c) of the Regulations).

### **Obligations and Conditions**

7. In carrying out the Designated Functions and in exercising the Powers set out in Paragraph 6 above ATVOD shall comply with the following Obligations and Conditions:
- (i) to act in accordance with s368B(9)(e) of the Act;
  - (ii) to ensure, in performing any function to which this Designation relates, that it takes all appropriate steps to comply with the statutory and regulatory duties and obligations that apply to Ofcom in performing its regulatory functions, including in particular:
    - (a) to have regard in all cases to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and to such of the matters in section 3(4) of the Act as appear to be relevant to it in the circumstances;
    - (b) to consult and carry out impact assessments in relation to the carrying out of the Designated Functions in circumstances where Ofcom would be required to do so to comply with section 7 of the Act; and
    - (c) to comply and secure that its staff comply with section 393 of the Act (confidentiality);
  - (iii) following referral or appeal to Ofcom in accordance, to accept any decision of Ofcom on scope or as to whether a programme is included in an on-demand programme service;
  - (iv) to ensure, that in carrying out its function under Paragraph 5(iii) of this Designation, it satisfies the requirements under section 368NA of the Act (Fees) and in particular:
    - (a) in each financial year to consult in such manner as Ofcom considers appropriate, whether alone or jointly with Ofcom, the Service Providers likely to be required to pay them a fee; and
    - (b) to publish, in such manner as Ofcom considers appropriate, the amount of the fee Service Providers will be required to pay;

- (v) to consult with Ofcom in preparing any Rules it proposes to issue for the purpose of securing that Service Providers comply with the relevant requirements of the Act and to obtain Ofcom's prior written approval of the Rules before publishing them;
- (vi) to ensure that such Rules are expressed as the relevant requirements of the Act and are expressed without further material additions or omissions;
- (vii) to consult with Ofcom in preparing non-binding interpretative guidance to the Rules (and any subsequent material changes to that guidance), and to obtain Ofcom's prior written approval of such guidance before publishing it or any changes to it;
- (viii) to ensure that in drawing up any guidance referred to in this Designation, such guidance reflects the following:
  - (a) that it is provided as non-binding guidance only in order to aid interpretation of the Rules;
  - (b) that it will be the Rules themselves, rather than the guidance, which determine whether a contravention of the Rules has taken place;
  - (c) that compliance with the guidance does not itself confer a presumption of conformity with the Rules; and
  - (d) that non-compliance with the Rules will be taken to be non-compliance with the relevant requirements in the Act;
- (ix) to have in place and publish appropriate and robust complaints handling processes in order to carry out the Designated Functions, such processes to be formulated in consultation with Ofcom;
- (x) to handle complaints received by it in accordance with its obligations in this Designation;
- (xi) to comply with the Key Performance Indicators ('KPIs') set out in the Schedule to this Designation for its complaints handling arrangements;
- (xii) to consult Ofcom before issuing any enforcement notification it is empowered to issue under this Designation in accordance with sections 368BB and 368I of the Act;
- (xiii) to comply with the reporting obligations set out in the Schedule to this Designation;

- (xiv) to inform Ofcom forthwith of all cases where a Service Provider to whom ATVOD has given an enforcement notification does not comply with it within the period fixed by ATVOD in the enforcement notification and, if requested by Ofcom, provide copies of all relevant evidence and submissions, in order that Ofcom can decide whether to exercise its powers to impose a sanction on that Service Provider in accordance with sections 368J, 368K or 368L, or take other such steps that Ofcom considers appropriate to secure compliance;
- (xv) to refer to Ofcom immediately (together with copies of all the relevant evidence and submissions) all cases where ATVOD considers that a service provider may be in contravention of sections 368E to 368H of the Act due to the inclusion in the service of material likely to encourage or to incite the commission of crime, or to lead to disorder; and where the contravention may be such as to justify the need for Ofcom to take urgent action under section 368L of the Act (suspension or restriction of service for inciting crime or disorder);
- (xvi) not to make a determination referred to in sections 368BB and 368I unless it has reasonable grounds for believing that a contravention of section 368D is occurring or has occurred and it has allowed the provider an opportunity to make representations about that apparent contravention;
- (xvii) where ATVOD makes a determination:
  - (a) that a person is providing an on-demand programme service; or
  - (b) following complaint or otherwise concerning compliance with the relevant requirements of the Act, that a particular programme is or is not 'a programme included in an on-demand programme service' in accordance with section 368R(2) of the Act,ATVOD, when notifying the Service Provider or the parties to the complaint, as the case may be, of its determination, shall inform the Service Provider and, where appropriate, the parties, that they may request an appeal by Ofcom of that determination in accordance with Ofcom's relevant procedures;
- (xviii) not to enforce any requirements of section 368D of the Act other than those in respect of which it has Designated Functions;
- (xix) to cooperate fully with Ofcom at all times, including:

- (a) to consult Ofcom, as appropriate, in cases where there is any doubt in connection with any of the Designated Functions and/or ATVOD's Powers, Obligations and Conditions under this Designation or any other provision of this Designation; and
  - (b) to supply Ofcom forthwith on request with any information it reasonably requires in connection with the carrying out of its functions;
- (xx) as part of fulfilling the duty to encourage Service Providers to ensure that their services are progressively made more accessible to people with disabilities affecting their sight or hearing or both, to:
  - (a) provide to Ofcom by no later than 30 June 2010 a detailed plan in writing setting out how ATVOD will fulfil this duty and including proposed guidance to Service Providers, such guidance not to be issued without Ofcom's prior approval; and
  - (b) comply with the reporting obligations in the Schedule to this Designation;
- (xxi) as part of fulfilling the duty to ensure that Service Providers promote, where practicable and by appropriate means, production of and access to European works (section 368C(3) of the Act) to:
  - (a) provide to Ofcom by no later than 30 June 2010 a detailed plan in writing setting out how ATVOD will fulfil this duty and including proposed guidance to providers of on-demand programme services, such guidance not to be issued without Ofcom's prior approval; and
  - (b) comply with the reporting obligations in the Schedule to this Designation;
- (xxii) to notify Ofcom immediately if it has reason to believe it may no longer be able to carry out the Designated Functions for any reason and/or may no longer be able to satisfy the requirements of section 368B(9) to be the appropriate regulatory authority in relation to the Designated Functions and in each case to use its best endeavours to resolve any such issues promptly; and
- (xxiii) in the event that ATVOD no longer wishes to be designated as the appropriate regulatory authority for the purpose of carrying out the Designated Functions and intends to withdraw its consent, it shall notify

Ofcom in writing at least six months before ceasing to carry out the Designated Functions, setting out its reasons.

8. For the avoidance of doubt, this Designation shall not be revoked except in accordance with Paragraphs 15 and 16 below.

#### **Variation of this Designation**

9. Ofcom may vary this Designation at any time, subject to Ofcom notifying ATVOD in writing not less than thirty days prior to the date that the proposed variation is to come into force in order to give ATVOD a reasonable opportunity to comment or, exceptionally, in such lesser period as Ofcom considers appropriate.
10. ATVOD may also request a variation of this Designation at any time for Ofcom's consideration. Any variation will take effect only on Ofcom signing and issuing a notice of variation to that effect.

#### **Duration of this Designation**

11. This Designation is to have effect from 18 March 2010 and to continue for a period of ten years from the date it has effect ('the expiry date') or until such time as it is revoked in accordance with Paragraphs 15 and 16 below.
12. No less than twelve months before the expiry date, Ofcom and ATVOD shall discuss in good faith a renewal of this Designation for a further ten year period, or for such other period as they may agree; the decision whether or not to renew shall rest with Ofcom.

#### **Review of this Designation**

13. This Designation shall be subject to a formal review by Ofcom at the expiry of two years from the date of this Designation taking effect.

#### **Publication of this Designation**

14. Ofcom shall publish this Designation in such manner as it considers appropriate for bringing it to the attention of persons who, in their opinion, are likely to be affected by it. ATVOD shall publish this Designation in the same manner as Ofcom and subsequent to Ofcom having first published it.

#### **Revocation of this Designation**

15. Ofcom may revoke this Designation at any time in accordance with section 368B(7) of the Act.

16. Ofcom must revoke this Designation if it is no longer satisfied that ATVOD is able to satisfy the requirements for being the appropriate regulatory authority set out in section 368B(9) of the Act or if ATVOD no longer consents to being designated, having first notified Ofcom in accordance the obligations in Paragraph 7(xxiii) above;
17. In exercising its powers to revoke under Paragraphs 15 and 16 above, Ofcom will give reasonable notice to ATVOD of its intention to revoke and will give ATVOD an opportunity to make representations and, where in the circumstances Ofcom considers it appropriate, an opportunity to take any remedial steps within such period as Ofcom requires; that period of notice being of such period as Ofcom shall determine to be appropriate in all the circumstances.

#### **For the Avoidance of Doubt**

18. ATVOD is only empowered to carry out the Designated Functions and exercise the powers specifically designated to them in this Designation. Accordingly, and for the avoidance of doubt, ATVOD is not the appropriate regulatory authority in relation to any function set out in the Act that does not form part of the Designated Functions (including, in particular, the power to impose financial penalties and to require suspensions or restrictions of on-demand programme services).
19. Any Notice given by ATVOD under Paragraph 7 (xxii) or (xxiii) above, would not have the effect of revoking this Designation unless or until Ofcom decided to revoke in accordance with Paragraphs 15 and 16 above.
20. ATVOD may not designate or otherwise appoint any body or person to act as the appropriate regulatory authority in its place.
21. Where ATVOD is designated for a purpose, Ofcom may act as the appropriate regulatory authority for that purpose concurrently with or in place of ATVOD (section 368B (3) of the Act).
22. To the extent that no body is designated for a purpose, Ofcom may act as the appropriate regulatory authority for that purpose (section 368B(2) of the Act).
23. Where there is any inconsistency or conflict between the provisions of this Designation and the provisions of the Act, the provisions of the Act shall prevail.

**Ofcom's Commitments to ATVOD**

- 24. In accordance with its powers under the Act, Ofcom shall take such steps as it considers appropriate by way of enforcement action against any Service Provider which has failed to comply with an enforcement notification issued by ATVOD.
- 25. Subject to any restriction in law, Ofcom shall provide ATVOD with such assistance and information as ATVOD may reasonably require from time to time under section 368B(4) and (10)(c) of the Act.
- 26. Ofcom shall consider in good faith any requests made by ATVOD from time to time under Paragraph 10 for a variation of this Designation.

Signed:

Date:

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**Stewart Purvis,**  
Partner, Content and Standards, Ofcom

**Person duly authorised in accordance with Paragraph 18 of the Schedule to the Office of Communications Act 2002**

## **SCHEDULE**

### **Reporting Obligations and Key Performance Indicators**

#### **Reporting Obligations**

1. ATVOD shall report to Ofcom on the carrying out of the Designated Functions as set out below.
2. ATVOD shall by no later than 31 October 2010 provide Ofcom with a written report summarising its exercise of the Designated Functions and its costs, income and expenditure during the period 18 March 2010 to 30 September 2010.
3. ATVOD shall by no later than 31 March 2011 provide Ofcom with a written report detailing its exercise of the Designated Functions and its costs, income and expenditure during the period 18 March 2010 to 31 December 2010.
4. ATVOD shall by no later than 31 March 2012 provide Ofcom with a written report detailing its exercise of the Designated Functions and its costs, income and expenditure during the period 1 January 2011 to 31 December 2011.
5. The reports referred to in paragraphs 2 - 4 of this Schedule shall include the following information:
  - (i) the number of complaints received and details of the programmes and the on-demand programme service providers to which they related;
  - (ii) the number of individuals and organisations who submit complaints;
  - (iii) the number of complaints investigated by ATVOD and the status of those cases i.e. 'informal investigation', 'not investigated after preliminary work' and 'full investigation';
  - (iv) the number of cases where contraventions of the Rules by providers of on-demand programme services have been (a) upheld and (b) upheld in part as contraventions of the Rules;

- (v) any data and information collected or prepared in relation to the duties in sections 368C(2) and 368C(3) of the Act; and
  - (vi) ATVOD's plans, estimates and activities regarding the levying of fees on Service Providers under section 368NA of the Act.
- 6. The Chair and Chief Executive of ATVOD will report in person on the matters set out in this Designation to Ofcom's Content Board at meetings of the Content Board as reasonably requested by Ofcom.
- 7. ATVOD shall provide such information and assistance to Ofcom as Ofcom shall from time to time reasonably require for purposes connected with Ofcom's (or another designated body's) functions under Part 4A of the Act and generally as reasonably required to assist Ofcom to review how effectively ATVOD has exercised, or is exercising, the Designated Functions.

#### **Key Performance Indicators**

- 8. ATVOD shall comply with the Key Performance Indicators ('KPIs') agreed between Ofcom and ATVOD within three calendar months of this Designation taking effect, and as may varied from time to time with the agreement of both parties, for its complaints handling arrangements.

## **ANNEX**

### **Written undertakings provided by ATVOD to Ofcom**



P O Box 561  
Walton on Thames  
Surrey KT12 9DA

Stewart Purvis  
Partner, Content and Standards  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HAT

17 March 2010

By courier

Dear Stewart Purvis

Further to your letters of 2 and 4 February 2010, I am writing as Chair of ATVOD to provide ATVOD's written undertakings in relation to each of the criteria which need to be satisfied before it can be designated by Ofcom as the appropriate regulatory authority for VOD editorial content, including each of the statutory criteria set out in Section 368B of the Communications Act 2003 ('the Act'). We also confirm our consent to being designated below.

Accordingly, ATVOD now undertakes that:

(a) it is a fit and proper body to be designated;

- *ATVOD has taken all necessary steps in terms of its competency, resourcing and otherwise to ensure that it is a 'fit and proper' body in all respects to carry out any functions designated to it by Ofcom under section 368B of the Act for the purpose of regulating editorial content on on-demand programme services and has complied with all the requirements placed upon it. In addition, ATVOD has no reason to consider that it is not in any respect a fit and proper body to be designated;*

(b) it has access to financial resources that are adequate to ensure the effective performance of its functions as the appropriate regulatory authority;

- *ATVOD, having estimated the likely costs of carrying out the delegated functions up to 31 March 2011, will exercise any powers given to it on designation to levy fees from the providers of on demand programme services under section 368NA of the Act, in a manner so as to ensure that the fees levied during the period up to 31 March 2011 will constitute an appropriate contribution to its costs in accordance with the statutory requirements of the Act; and*
- *In addition, as set out in the letter from Jon Zeff of DCMS dated 11 March 2010 and ATVOD's response of 12 March 2010, following designation ATVOD will also be in*

*receipt of a grant of a total of £120,000 from DCMS in order to cover necessary expenditure in the period prior to the receipt of fees. This grant will be paid by DCMS no later than 24 March 2010 if we are designated by Ofcom before that date. £80,000 of this grant must be repaid, but repayments will be spread over eighteen months and are included in the forecast of costs provided. ATVOD has received, and requires, no financial support from Ofcom.*

(d) it is sufficiently independent of providers of on-demand programme services;

- *Following an open recruitment process on Nolan principles, the ATVOD Board now comprises: an independent Chair (Ruth Evans), four independent members (Tim Lefroy, Sara Nathan, Nigel Walmsley, Ian McBride) and four industry members. It therefore has a majority of independent members. The draft complaints procedure that it has developed with Ofcom also provides that 'Any Director of ATVOD who represents a VOD service provider subject to the complaint is excluded from any consideration or determination of that complaint';*

and

(e) it will, in performing any function to which the designation relates, have regard in all cases -

(i) to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;

and

(ii) to such of the matters mentioned in section 3(4) of the Act as appear to the body to be relevant in the circumstances;

- *ATVOD will continue to adopt and apply the principles of better regulation and is committed to performing its designated functions in a manner which is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.*
- *It will have regard, among other factors, to the desirability of preventing crime and disorder ;*
- *It will take all appropriate steps to comply with the statutory and regulatory obligations that apply to Ofcom in performing its regulatory functions, including in particular the obligation to consult and carry out impact assessments in relation in circumstances where Ofcom would be required to do so to comply with section 7 of the Act; and*
- *It will comply and secure that its staff comply with section 393 of the Act (confidentiality).:*

In addition, I confirm that ATVOD consents to being designated by Ofcom as the appropriate regulatory authority for the purpose of carrying out the functions which Ofcom delegates to it, such designation to be to the extent specified by, and on the terms and conditions set by, Ofcom.

I hope that as a result of these undertakings and the supporting material provided to Ofcom, Ofcom is now satisfied that ATVOD has 'fulfilled all its various commitments to make itself ready for designation' and that it can be designated as the appropriate regulatory authority.

May I take this opportunity to add my thanks to those of Elizabeth Filkin, the former Chair of ATVOD, to you and your team for all your support and encouragement and I look forward very much to working with you.

With all good wishes,

Yours ever,

Ruth Evans

Chair  
The Association for Television On Demand