OFCOM GUIDELINES FOR DEALING WITH REGULATORS OF OTHER EU MEMBER STATES IN RELATION TO UK-LICENSED TELEVISION CHANNELS AND UK-BASED ON DEMAND SERVICES

INTRODUCTION

The Audiovisual Media Services Directive ("the Directive") sets out the framework for the regulation of television and other audio-visual media services in each of the countries in the European Union. The Directive encourages cooperation between European communications regulators in a number of areas.

These guidelines explain the procedures Ofcom usually will follow in dealing with media regulators from other Member States of the European Union when handling complaints about services which fall under UK jurisdiction but are primarily directed towards people in another Member State.¹

Ofcom will consider each case on its merits, and will apply these guidelines where it is appropriate to do so subject to and in accordance with its regulatory obligations. These guidelines are not legally binding.

These guidelines are separate from the "enhanced cooperation procedure" which is provided for under Article 3 of the Directive in respect of television broadcasting and section 335A of the Communications Act 2003, which transposes the requirements of Article 3 into UK legislation, and should not be confused with that procedure.

These guidelines reflect Ofcom’s current practice, and we hope they will encourage understanding and further co-operation between Ofcom and the communications regulators in all other EU Member States.

BACKGROUND

- The Directive² sets out the framework for regulation of television services and audiovisual on-demand services ("services") across Europe.

- This Directive requires a service provider to comply with the rules and laws applicable in the Member State where the service is established. Such services fall under the jurisdiction of that Member State. This is subject to very limited exceptions acknowledged in the Directive.

- Under the Directive, a service may be established in one Member State, but directed wholly or mainly to an audience in another Member State.

¹ These guidelines also apply, mutatis mutandis, to EFTA countries
² Directive 2010/13/EU

Updated March 2012
• The Directive allows each Member State to require services under its jurisdiction to comply with more detailed or stricter rules in areas covered by the Directive. Such rules may be different in each Member State.

• Ofcom is the independent regulator of the UK communications industries. It is responsible for, among other things, regulating advertising and programme content on television and in on-demand services falling under UK jurisdiction. These services include those receivable in other Member States of the European Union. Co-regulators have been designated by Ofcom for the regulation of advertising on television and in on-demand services (the Advertising Standards Authority) and programme content in on-demand services (the Authority for Television on Demand)\(^3\). Please see below for further details of complaints in these areas.

• In areas not subject to co-regulation, Ofcom itself handles complaints about television services which fall under UK jurisdiction (and therefore hold a licence granted by Ofcom) but which are receivable in other Member States of the European Union.

• Ofcom believes there are benefits in cooperating with the official regulators of other Member States, to assist each other in the handling of complaints concerning such services.

• In the same way, should there be complaints from UK audiences concerning such services established (and licensed) in other Member States, Ofcom would appreciate the regulators of such services reciprocating, insofar as is possible, the principles set out in this guidance.

**LAWS, CODES AND GUIDANCE**

• All Ofcom television licensees and providers of on-demand programme services must comply with relevant statutory requirements as well as the applicable Ofcom codes.

• The applicable television codes are published and available on the Ofcom website (http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/).

• Relevant codes for advertising and on-demand content are available on the ASA and ATVOD websites respectively (http://www.cap.org.uk/The-Codes.aspx and http://www.atvod.co.uk/rules-and-guidance).

---

\(^3\) Primary responsibility for regulating broadcast advertising is contracted out to the ASA (see The Contracting Out (Functions Relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004 – SI 1975/2004).

Updated March 2012
• The regulation of audiovisual on-demand programme services is governed by Part 4A of the Communications Act 2003.4

• Regulators from other Member States may wish to refer to these before addressing any specific queries to Ofcom.

COMPLAINTS

Procedures for complaints about television programmes (and sponsorship)

• The processes for dealing with complaints are set out in detail on the Ofcom website http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/. Ofcom has two sets of procedures for dealing with broadcasting complaints: one for complaints regarding content standards for television and radio and one for complaints regarding fairness and privacy issues.

• Ofcom’s procedures for investigating breaches of content standards require that complaints are made within 20 working days of the programme being broadcast. This deadline reflects the fact that there are limits on licensees’ requirements to retain recordings, and it may not be possible for Ofcom to assess and/or investigate complaints it receives more than 20 days after the relevant programme has been broadcast.

• Ofcom will log all complaints that it receives and acknowledge receipt but does not normally write to complainants with the outcome of its deliberations.

• Ofcom then makes an initial assessment of the complaint to determine if the complaint raises potentially substantive issues under the relevant code/s and if the broadcast material requires further assessment and/or investigation.

• If Ofcom considers there may have been a breach of the relevant code/s it will launch an investigation, at which point it will normally ask the broadcaster for its representations regarding the material. At the end of the investigation Ofcom will determine whether or not the relevant code/s (or relevant licence condition) has been breached. All breach decisions are published in Ofcom’s Broadcast Bulletin, which is available here: http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/.

• If Ofcom judges a breach to be serious, repeated or deliberate, it may decide to impose a statutory sanction on the provider of the service. In the most serious cases, the sanction may be a financial penalty and/or the revocation of the broadcaster’s licence.

---

ATVOD has been designated by Ofcom as the authority for regulating editorial content in on-demand programme services (designation available at http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/designation180310.pdf) and the ASA has been designated in relation to advertising included in such services (see http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/asa.pdf)

Updated March 2012
• Ofcom’s procedures for the handling of fairness and privacy complaints follow a similar process to that set out above, but there are some additional stages which are set out in the procedures. Both the complainant and the broadcaster may make representations, and consideration of the case may involve a hearing. Fairness and privacy complaints must be submitted on the correct form, which can be found by visiting:
http://www.ofcom.org.uk/complain/progs/specific/?itemid=353159

Complaints about television advertising and advertising in on-demand services

• Complaints about television advertising are subject to the UK Code of Broadcast Advertising (http://www.cap.org.uk/The-Codes/BCAP-Code.aspx). Complaints about advertising in on-demand services, meanwhile, are subject to the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (http://www.cap.org.uk/The-Codes/CAP-Code.aspx ) and in particular Appendix 2 (http://www.cap.org.uk/The-Codes/CAP-Code/CAP-Code-Item.aspx?q=CAP+Code+new+Additional+Information_Appendix+2+-+Advertising+rules+for+on-demand+services+regulated+by+statute_Rules). Complaints about advertising in both of these media are investigated by the Advertising Standards Authority (ASA), with the exception of complaints about political advertising, the handling and investigation of which remain within Ofcom’s remit.

• Information about how to submit a complaint about advertising to the ASA can be found at http://www.asa.org.uk/Complaints-and-ASA-action/How-to-complain.aspx. The ASA’s decisions are published on the ASA website at: http://www.asa.org.uk/Complaints-and-ASA-action/Adjudications.aspx


• Information about how to submit a complaint about such VOD editorial content can be found at http://www.atvod.co.uk/complaints and complaints should be sent to ATVOD on the online form at: http://www.atvod.co.uk/complaints/submit-a-complaint.

Handling of cross-border complaints by Ofcom

• If the regulatory body for audiovisual media services in another Member State receives a complaint about a television programme broadcast by a service licensed by Ofcom, this regulator may forward that complaint to Ofcom for consideration. If the complaint is about a television advertisement broadcast by a service licensed by Ofcom, or about an advertisement in an on-demand
service, the receiving regulator may forward that complaint directly to the ASA for consideration. Likewise, a complaint about an on-demand programme service falling under UK jurisdiction may be forwarded directly to ATVOD. If Ofcom receives a complaint from another regulator about advertising or about editorial content in a UK-based on-demand service, the details of the complaint can be forwarded to the ASA or ATVOD upon request.

- If Ofcom receives a complaint directly from a member of the public concerning a service under Ofcom’s jurisdiction whose output is aimed at another Member State, Ofcom will, where permitted, inform the regulatory body of that Member State that a complaint has been received.

- Under either of the scenarios set out above, the regulator in the other Member State may, if it wishes, provide Ofcom with any information relevant to the complaint (for example, information regarding the cultural context). Ofcom will consider this information. Where this regulator wishes to provide formal representations to Ofcom, it should do so as soon as is reasonably practicable.

- Ofcom will handle such complaints in accordance with UK law and Ofcom's published rules and procedures (the Ofcom Broadcasting Code, other relevant Codes or rules, and associated guidance), and may write to the complainant or regulator where appropriate. Ofcom will, where permitted, show its decisions or adjudications to the official regulator of another Member State. Final decisions and adjudications are published on the Ofcom website at http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/

- The regulatory body of another Member State may also send the results of any monitoring reports on the content of foreign television broadcasts to Ofcom for consideration.

**COOPERATION AND ASSISTANCE**

- Ofcom is happy to respond to queries from regulatory bodies in other Member States about the laws, rules and guidance relevant to regulating television or audiovisual on-demand content under its jurisdiction.

- It would be helpful if regulatory bodies in other Member States would be willing to provide similar assistance regarding the laws, rules and guidance relevant to regulating television or audiovisual on-demand media services within their own jurisdiction. Information in the light of national cultures and heritage and local sensitivities would be particularly welcome.

---

5 Under section 392 of the Communications Act 2003, Ofcom is subject to general restrictions on the disclosure of information.
CONTACT DETAILS

- General queries about these guidelines should be addressed to: ofcom.international@ofcom.org.uk.

- All complaints from regulators of audiovisual media services in other Member States about services under UK jurisdiction should be addressed in the first instance to: ofcom.international@ofcom.org.uk. Please put ‘Complaint’ in the e-mail subject line.