



The Association for Television On-Demand (ATVOD) contribution to the public consultation on the revision of the TVWF Directive Issue Paper: Right to Information and Short Reporting

1. Introduction

ATVOD welcomes the opportunity to comment on the TVWF Issue Paper on *Right to Information and Short Reporting* (the “**Paper**”) and the proposed review of the Television Without Frontiers Directive (the “**Directive**”).

ATVOD is the self-regulatory body for Television On-Demand services in the UK and represents seven communication companies (Video Networks, The On Demand Group, NTL, Telewest Broadband, Kingston Interactive Television, Blockbuster and BT). ATVOD’s members in the UK provide and enable, through a variety of media and technologies, a number of different content-on-demand services such as aggregation, storage and delivery of audiovisual content. Together, these companies make up the largest, and most diversely competitive, video-on-demand community outside the United States.

ATVOD’s members have signed up to the ATVOD Code of Practice. The Code is based on two core principles: first, that members must assist consumers and the general public with their efforts to protect children and young people from unsuitable content; second, that members must provide adequate information and guidance to consumers to enable the informed selection of content and commercial services.

ATVOD’s core principles are reflected by its members’ implementation of a range of access control mechanisms that enable consumers to control the access of minors to potentially unsuitable content. These mechanisms work through a variety of methods, including personal identification number (PIN code) protection and, where appropriate, content watershed rules and other point-of-sale limitations. ATVOD’s members also provide advice and guidance to their consumers on steps that can be taken to manage any content that may cause harm and offence.

ATVOD members join the body voluntarily and consider the use of ATVOD’s ‘trustmark’ as being an important means of inspiring and ensuring public confidence in the establishment of new on-demand television services.

2. General Comments

ATVOD does not recognise a need for additional centralised audio-visual regulation at this time – particularly in relation to the content-on-demand industry within the UK - and is not persuaded that the scope of the Directive should be expanded as proposed. ATVOD believes that emerging self-regulatory models are well-placed to provide structure and regulation in scale and application commensurate to the needs and circumstances of the new electronic content services and their consumers.

ATVOD therefore takes issue with the proposition that audio-visual regulation should be centrally mandated and imposed on all forms of electronic delivery of audiovisual content. This view is held whether that regulatory mandate is fulfilled by state, co- or indeed self-regulatory organisations.

ATVOD agrees with the concern articulated by unspecified new services providers that “it would be inappropriate to impose detailed television regulation on all audiovisual services”. However, ATVOD goes further and suggests there is no need to impose additional centralised audiovisual regulation on new electronic content services, such as content-on-demand.

ATVOD believes that, whilst some services of concern to the Commission operate within a regulatory vacuum, they do not operate within a legal void. Member State legislation, in combination with existing directives such as the E Commerce Directive, already provide a fabric of legal certainty for such services. It is also the case that self-regulatory organisations such as ATVOD are emerging to fill the regulatory gap and provide structure and certainty to emerging audiovisual services. The development of such organisations can render unnecessary centralised or state-sponsored regulation.

The regulatory burden imposed on the ATVOD membership by its Code of Practice is bespoke to the needs of the UK’s content-on-demand industry and the cultural needs of its consumers. Its codification is proportionate, flexible and capable of rapid adjustment should it prove necessary to address the changing technological landscape – a highly likely event in such a new, dynamic and technology-dependent industry – or the maturing needs of the consumers. The flexibility delivered by self-regulatory organisations is far greater than could be achieved by a centralised regulatory framework faced with the need to apply with equal relevance and efficacy to a broad range of old and emerging media throughout the European Community.

Furthermore, self-regulation is capable of producing environmental conditions conducive to growth. ATVOD has itself helped to deliver legal and economic certainty to the UK’s content-on-demand industry. Since ATVOD’s inception, content-on-demand services have taken root in the UK and are beginning to flourish. Four operators now provide commercial on-demand services to the British public, supported by others within the value-chain. Subscriber numbers have risen from around 15,000 in 2003 to a figure in excess of 500,000 in July 2005 and are expected to continue their sharp rise as further operators enter the market and existing providers expand their networks and extend their deployment. In excess of 3 million items of content have been selected by consumers since 2003, without attracting any complaints from their consumers. Cable’s near-video-on-demand service, Front Row, has now operated, under similar rules, for more than seven years with only two valid complaints and more than 43 million transactions.

ATVOD believes that the imposition of any centralised regulatory burden, intended to apply to all forms of electronic delivery of audiovisual content, may have a chilling effect on investment in the providers of those new services and their deployment across Member States. If that was the case, service evolution would slow and both investors and consumers would lose out.

ATVOD's achievements to date support the argument that additional centralised regulation is unnecessary. Such state-sponsored regulation is not needed to stimulate service growth. Neither is it needed to enshrine basic regulatory principles. Those objectives can be met by self-regulatory mechanisms.

The Commission has said that its objective, in revising the Directive, is to modernise the rules on audiovisual media. History has shown that, in many cases, centralised regulation, enacted through Member State legislation, is neither dynamic nor flexible. The extent of the ambition expressed by the Commission's papers suggests a desire to apply a regulatory fix to all forms of electronic delivery of audiovisual content and suggests the common treatment of disparate and evolving services across all Member States. Many of these services are insufficiently mature for the detail of the proposed regulations to be sharply defined or appropriately applied. ATVOD is concerned that the imposition of one regulatory framework onto all service providers will create a cumbersome and disproportionate regulatory burden that will slow service evolution, subject 'non-linear' operators in general, and the content-on-demand industry in particular, to an extended period of regulatory uncertainty and restriction and may quickly become overtaken by the pace of technological change and convergence. Whilst ATVOD shares many of the concerns articulated by the Commission it believes that self-regulatory organisations are well-placed to tackle those concerns in a proportionate and flexible manner.

ATVOD therefore believes that the Directive should not be extended (as proposed or at all) to 'non-linear' services.

ATVOD is also concerned at the Paper's proposals for territorial competence, intended to be applied to non-linear services. These proposals do not appear to tackle the issue of enforcement or suggest any practical or effective way of ensuring that the regulatory burden imposed on Europe's providers of new audiovisual services is shouldered to the same extent by those operating from outside the Community.

ATVOD believes that there is a significant risk that an extension of the Directive to new services will materially disadvantage the European service providers and providing an advantage to their international and territorially foot-loose competitors. Further, ATVOD is very concerned that, in such a situation, consumers would lose confidence in services because of the widely different approaches to managing content compliance.

3. Specific comments on Issues Paper: Right to Information and Short Reporting

ATVOD believes the issues of short form reporting and information access have taken on new significance with the advent of interactive services which embody high value in the timely availability of a short extract – the provision of short clips of the goals of a soccer match on mobile 'phones being the most obvious. There will be other, similar, applications that will be developed in the video-on-demand

environment and consumers will expect to have access to the same content in the same way in all forms of interactive television.

Again, for the sake of maintaining a fair competitive environment that will encourage initial, and continuing, investment ATVOD would want to ensure that fair access was available to its members so as to allow secure commercial development and the maintenance of consumer confidence.

4. Conclusions

ATVOD believes that the Commission should take the needs of the interactive television community into account when appraising the rules for fair access to short extract programming and information.

ATVOD requests the Commission to re-examine the merits of its proposed review of the Directive. It suggests that there is no current need for an extension of the regulatory burden to nascent content-on-demand services. It believes that, to the extent such services operate within a regulatory vacuum, that vacuum is increasingly being filled by self-regulatory organisations propagating rational, proportionate and bespoke regulation that are most easily able to adapt their approach to the advances in technology and commercial structure.

To the extent that the Commission maintains its interest in extending the Directive to 'non-linear services', ATVOD urges the Commission to carry out a thorough impact assessment of the effects such a regulatory regime would have on all affected industries, including the content-on-demand industry in particular. ATVOD requests that such an assessment is carried out before the publication of a draft revision to the Directive and postulates that such an assessment will identify the likelihood that an increase in the regulatory burden proposed by the Commission will have a chilling effect on service evolution and deployment, disadvantaging business and the consumer alike.

ATVOD is looking forward to constructive dialogue with the Commission on its proposals for the Directive, particularly in relation to content-on-demand services.

**The Association for Television on Demand
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