

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

ATVOD

THE AUTHORITY FOR TELEVISION **ON DEMAND**

Procedure for Complaints about Editorial Content on VOD Services

Edition 1.1

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Note on this Edition: This Edition differs from Edition 1.0 in the following material respects only:

- (i) all references to The Association for Television On Demand have been replaced by references to The Authority for Television On Demand; and
- (ii) all references to ATVOD, PO BOX 561, Walton on Thames, Surrey, KT12 9DA have been replaced by ATVOD, Thames Court, 1 Victoria Street, Windsor, Berkshire, SL4 1YB.

Introduction

1. This document outlines the procedures ATVOD will normally follow in the handling of complaints concerning editorial content on video on demand (“VOD”) programme services (“VOD Services”).
2. As a result of the Audiovisual Media Services Directive 2007 (“the Directive”), providers of certain VOD services are required to comply with minimum standards set under the Directive. These requirements were implemented into UK law through various amendments to the Communications Act 2003 (“the Act”). Ofcom has delegated powers and duties to ensure compliance with the requirements that relate to the editorial content of VOD services to ATVOD.
3. ATVOD will decide on complaints concerning editorial content on VOD services and information which must be supplied to users of VOD services in accordance with the legislative requirements. The words of the legislative requirements are reflected in Rules, which are available on ATVOD’s website along with accompanying guidance. Any contravention of the statutory requirements, as reflected in the Rules, will be treated as a failure to comply with the corresponding requirements under section 368D of the Act. Editorial matters falling within the statutory requirements, as reflected in the Rules, comprise:
 - harmful material likely to incite hatred;
 - protection of under 18s from content likely to seriously impair their physical, mental or moral development;
 - sponsorship;
 - product placement;
 - information to be provided to users of VOD services.
4. These procedures come into effect on 20 September 2010.

Is the VOD Service subject to the statutory requirements?

5. Complainants should note that not all providers of VOD services are subject to the requirements set out in the Act. A VOD service which fulfils all the criteria laid out in section 368A of the Act is deemed to be an ‘on-demand programme service, and is subject to compulsory regulation by ATVOD. The key criteria are as follows:

- that the principal purpose of the VOD service is the provision of programmes the form and content of which are comparable to the form and content of programmes normally included in television programme services;
 - access to the VOD service is on-demand;
 - there is a person who has editorial responsibility for the VOD service;
 - the VOD service is made available for use by members of the public; and
 - the service provider must be based in the UK.
6. The contact details of service providers whose VOD services are regulated by ATVOD are published on ATVOD's website (see www.atvod.co.uk). In addition, under the Act regulated services are required to make available to potential complainants, contact details about themselves and who they are regulated by in order to assist potential complainants.
7. If a complaint relates to a VOD service that has not been notified to ATVOD, before considering the complaint, ATVOD will make a determination as to whether the VOD service falls into scope of the legislative requirements, and should be notified. This will mean that the procedures set out in paragraph 14 onwards below would be put on hold pending ATVOD's determination as to whether the VOD service should be notified. It should be noted that any determinations by ATVOD as regards scope can be appealed to Ofcom, by the VOD service or a sufficiently interested third party.

How to complain

8. For a complaint to be considered under the ATVOD complaints procedure, the complainant must normally have first tried to resolve the complaint with the VOD service provider directly. (If details of the VOD service provider are not already on the ATVOD website, ATVOD will endeavour to direct the complainant to the relevant service provider or notify the service provider of the complaint.) However, if the complainant considers that a service provider may be including material likely to encourage or to incite the commission of crime or to lead to disorder, the complaint should be made directly to ATVOD so that urgent consideration can be given to whether there may be a need for Ofcom to take urgent action to suspend or restrict access to the service.
9. Complainants should note that VOD service providers are obliged to retain a copy of every programme included in their service for only forty-two days after the day on which the programme ceases to be available for viewing. In order to enable ATVOD to properly investigate a complaint where the service provider is unable to resolve it to the complainant's satisfaction, complainants should always provide ATVOD with a copy of any complaint they make to a service provider at the same time as making the complaint to the service provider. ATVOD will then request a copy of the programme so that it can pursue the complaint should the issue not be resolved by the service provider.
10. If the complaint is not resolved satisfactorily by the service provider, or the service provider has indicated in writing that the complaint should be settled by ATVOD, then the complainant may refer the complaint to ATVOD. ATVOD will normally only consider a complaint in these circumstances if it was first made to the service provider no more than 28 working days after the content was first provided to the complainant, and the

complaint was submitted to ATVOD no more than 20 working days after the service provider had provided any final response to the complainant. Complaints that raise issues which may amount to a serious breach of the Rules may be considered by ATVOD without the complainant having first attempted to resolve the matter with reference to the service provider. Such cases include, but are not limited to, those in which the complaint raises concern that the service provider may be including material likely to encourage or to incite the commission of crime or to lead to disorder.

11. To make a complaint, complainants are advised to use the online complaints form at www.atvod.co.uk/complaints/submit-a-complaint. Alternatively, complainants can either e mail ATVOD at complaints@atvod.co.uk or write to ATVOD Complaints, Thames Court, 1 Victoria Street, Windsor, Berkshire, SL4 1YB. All complaints should include sufficient details for ATVOD to be able to investigate, i.e. the name, series number, and episode number or title of the programme complained about, the date (and if relevant) the time it was provided, the service on which it was provided, the nature of the complaint, and the complainant's full contact details. Failure to provide these details may mean that it is not possible to identify the programme within a reasonable time and as a result ATVOD may not be able to investigate the complaint. The completed complaints form should be returned to ATVOD, together with a copy of all correspondence and notes of any other communication between the complainant and the service provider concerning the complaint.
12. ATVOD will usually not consider anonymous complaints. Unless a complainant specifically requests at the time a complaint is made that his/her name and contact details should remain confidential, ATVOD reserves the right to disclose these to the VOD service provider. Although ATVOD will publish its Determination, ATVOD's considerations and any submissions regarding the complaint will otherwise remain confidential between the parties.
13. Each complaint will be acknowledged and the complainant will be given a reference number. All complainants will receive a response, even if their complaint does not require further investigation or does not fall within ATVOD's regulatory remit.

Initial Assessment

14. ATVOD will first decide if the VOD service is covered by the requirements of the Act and if the complaint raises a potential breach of the statutory requirements, as reflected in the Rules. If ATVOD determines that the service is not regulated under the Act or the complaint cannot amount to a contravention of the relevant requirements, it will inform the complainant and the complaint will then be closed automatically. The complainant may request a review of such a Determination in accordance with the procedure outlined below under the heading 'Requesting a Review'.
15. If ATVOD determines that the service provider is regulated under the Act, within 5 working days of this decision, ATVOD will normally contact the service provider to see if the complaint can be resolved without formal ATVOD intervention. If, within a further reasonable period (but not more than 28 days), the complaint has still not been resolved, ATVOD will formally consider the complaint under the Rules and corresponding statutory requirements.

16. ATVOD will make an initial assessment of the complaint. ATVOD may contact the complainant to ask for more information. ATVOD may request the service provider to provide a recording of the programme within 10 working days.
17. If ATVOD decides that the complaint raises potential compliance issues that warrant further investigation, ATVOD will follow the procedure set out below. ATVOD will write to a complainant if it decides that after an initial assessment a complaint does not raise any potential issues that warrant further investigation (for example, if the complaint is outside ATVOD's remit or the complaint is obviously without merit). The complainant may request a review of such a Determination in accordance with the procedure outlined below under the heading 'Requesting a Review'.

Investigation

18. If, having concluded its initial assessment, ATVOD considers that a complaint does raise potential issues under the statutory requirements, as reflected in the Rules, it will proceed to investigate (where it is warranted).
19. Complaints considered by ATVOD will be investigated by ATVOD's Executive, and complaints will be decided by a sub-committee of the ATVOD Board to whom the ATVOD Board has delegated the consideration and Determination of the complaint. The sub-committee will have a majority of independent members and any director of ATVOD who is employed by the VOD service provider subject to the complaint or otherwise subject to any actual or potential conflict of interest is excluded from any consideration or Determination of that complaint.
20. Where ATVOD considers, at this stage, that there may be a case for the VOD service provider to answer, it will write to the service provider setting out the applicable Rule and corresponding statutory requirement under which it is considering the complaint, together with its grounds for believing that a contravention of the Rule (and, accordingly, of section 368D) is occurring or has occurred and request a written response within 10 working days. ATVOD may raise issues other than those raised by the complainant, and may correspond with the service provider more than once in the course of the investigation.
21. ATVOD will then consider the response(s) of the VOD service provider and decide whether or not a contravention has occurred.

Determination

22. Where ATVOD considers that no contravention has occurred, it will notify the complainant and relevant service provider. Where ATVOD determines there has been a contravention of the Rules (and so of the Act), it will normally draft a Determination for publication. In some circumstances, ATVOD may consider it appropriate to publish a Determination in a case that does not involve a contravention, or in a case in which a contravention has been resolved.
23. Before publication on ATVOD's website, the service provider will be sent the draft Determination and will have the opportunity to provide comments on factual or typographical errors.

Publication

24. Having taken account of any such written representations and/or comments, as appropriate, ATVOD will finalise its Determination and inform the service provider and the complainant. ATVOD will normally publish its Determination on its website. The complainant or service provider may seek a review of ATVOD's Determination (see "Requesting a Review" below). If the Determination is reviewed ATVOD will normally publish the review of the Determination on its website (see below).

Requesting a Review

25. The complainant and the service provider each have the right to seek a review of ATVOD's Determination by the full ATVOD Board of Directors. The full board shall for this purpose exclude any directors who sat on the sub-committee that first considered and determined the complaint and any director who is employed by the service provider subject to the complaint or subject to any actual or potential conflict of interest.
26. A request for a review must be made in writing to ATVOD within 10 working days of notification from ATVOD of its Determination.
27. A request for a review must set out the ways in which the party believes that the Determination is materially flawed, for example if it is believed that the Determination is: obviously wrong in substance; or contains a significant mistake of fact; or has been reached following a failure of process.
28. The ATVOD Board will consider the request for review. The Board may decide not to entertain the request, on the grounds that it does not disclose any material grounds for review. If the review is entertained, the party which has not sought review will be given an opportunity to make a further written submission on the grounds for review.
29. The ATVOD Board will then consider the Determination in question and the submissions of both parties. The ATVOD Board may in its sole discretion refer the matter to an independent complaints reviewer for advice, but any recommendation of the independent reviewer shall not be binding on ATVOD. ATVOD will then take a final decision, having taken account of any recommendation of the independent complaints reviewer where a reference has occurred, either to uphold or to vary or reverse the original Determination. The final decision will be published on the ATVOD website.
30. Following this decision, ATVOD will treat the complaint as closed, and may decline to enter into any further correspondence or communication concerning the dispute in question.

Enforcement Notifications and Sanctions

31. Where ATVOD upholds a complaint against a VOD service provider, it may at its discretion, and following consultation with Ofcom, issue an Enforcement Notification under the Act. This may require the service provider, including:
 - to cease providing or restrict access to a specified programme or programmes of a specified description;

- to provide additional information to users of the service;
 - publish a correction; and/or
 - publish a statement of ATVOD's findings.
32. As an alternative to the issuing of an Enforcement Notification ATVOD may at its discretion refer the VOD service provider to Ofcom to consider the imposition of a financial penalty or suspension of the service.
33. Where a service provider does not comply with an Enforcement Notification ATVOD will refer the VOD Service provider to Ofcom to consider the imposition of a statutory sanction. ATVOD will provide Ofcom with a view of the type and level of any sanction which may be appropriate to impose.

Material Likely to Encourage or to Incite the Commission of Crime or Lead to Disorder

34. Where ATVOD considers that a service provider may be including material likely to encourage or to incite the commission of crime or to lead to disorder and that there may be a need for Ofcom to take urgent action to suspend or restrict access to a service ATVOD will immediately refer the complaint to Ofcom for consideration without reference to the service provider.

Complaints that cannot be considered

35. ATVOD cannot consider complaints about the following:
- VOD services which are subject to any other jurisdiction throughout the world other than the UK;
 - matters already being dealt with by the courts;
 - internet access, telephone or television services which are not supplied on demand or are otherwise outside ATVOD's remit;
 - any decision by a service provider whether or not to supply any product or service and the terms under which any product or service is supplied; or
 - hardware (such as the set-top box) or software supplied by a service provider to a user to enable use of a VOD service.
36. ATVOD may also decline to consider complaints:
- which, in the opinion of ATVOD, are frivolous, vexatious or which have been made persistently in the past without reasonable grounds or which contain language which is unnecessarily offensive, obscene or profane;
 - where insufficient information about the complaint is provided;
 - made outside the time limits set out in these procedures; or
 - if the complaint concerns matters which ATVOD considers would be more properly dealt with by the courts or another complaints procedure.

ATVOD Complaints
complaints@atvod.co.uk
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Berkshire
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www.atvod.co.uk