

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**

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# **Guidance on how to notify**

**Edition 1.1**

**Originally published 8 April 2010**

**Re-published 21 March 2011**

**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- (i) all references to The Association for Television On Demand have been replaced by references to The Authority for Television On Demand; and
- (ii) all references to ATVOD, PO BOX 561, Walton on Thames, Surrey, KT12 9DA have been replaced by ATVOD, Thames Court, 1 Victoria Street, Windsor, Berkshire, SL4 1YB.
- (iii) all reference to referring complex cases to Ofcom (previously in paragraph 11) has been deleted.

## Background

1. The Communications Act 2003 (“the Act”) was amended by the Audiovisual Media Services Regulations 2009<sup>1</sup>, which were made on 9 November 2009 and came into force on 19 December 2009, and the Audiovisual Media Services Regulations 2010 (“the 2010 Regulations”)<sup>2</sup>, which were made on 22 February 2010 and came into force on 18 March 2010). Under section 368BA of the amended Act, every provider of an On-Demand Programme Service, as defined in section 368A of the Act (a “Service Provider” and an “ODPS” respectively) is required to notify the appropriate regulatory authority of its intention to provide an ODPS. In accordance with section 368A(4) of the Act, the service provider is the person who has editorial responsibility for the service. ATVOD (the Authority for Television on Demand) has been formally designated by Ofcom on 18 March 2010 as the co-regulatory body for this purpose. ATVOD has also been designated general responsibility for regulating editorial standards for ODPS.

**Warning: All providers should note that it is a criminal offence to provide an ODPS if a valid notification has not been made to ATVOD.**

2. It is the responsibility of the Service Provider to consider, having taken its own legal advice, if appropriate, whether the service it is already providing, or intends to provide (see below), is an ODPS.
3. Any provider of a service that is an ODPS is now subject to various legal obligations. A summary of these obligations will be available on the ATVOD website in due course. They include the obligation to notify the service to the appropriate regulatory authority (see paragraphs 6-9 below). **All ODPS services being provided as at 18 March 2010 are required to be notified to ATVOD by the 30 April 2010.** In addition, any ODPS service that a person intends to provide after 18 March 2010, should be notified to ATVOD in good time so that the notification procedure has been completed by the time the service commences.

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

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

4. Statutory sanctions, including the imposition of a financial penalty, may be imposed if a provider fails to notify an intended service prior to its commencement. Provision of a service without a valid notification is also a criminal offence. It should be noted that all providers of ODPS services will be required to pay a regulatory fee, once the level of fees has been set<sup>3</sup>.

## Before a notification is made

5. In order to establish whether an on-demand service is likely to be within scope under the Act, and therefore requires notification, the provider of the service (i.e. the person with editorial responsibility) will need to consider the following in accordance with the criteria set out in section 368A of the Act:
  - Is the service an “on-demand programme service” (ODPS), as defined in section 368A of the Act?
  - Does the organisation have editorial responsibility for the service?
  - Is the provider under the jurisdiction of the UK?

In order to assist providers in assessing whether a service is likely to be within scope, ATVOD has prepared a set of guidelines entitled ‘Guidance on who needs to notify’, which is available at [www.atvod.co.uk](http://www.atvod.co.uk). If the answer to all of these questions is YES, then the statutory criteria are likely to have been met. As stated above, where this is the case, the person intending to provide the ODPS must give an advance notification to ATVOD at least 10 working days before beginning to provide the service. If a person was already providing the ODPS on 18 March 2010, they must notify ATVOD by 30 April 2010 stating that they are already doing so.

6. Before reaching a decision on whether or not a service is within scope as an ODPS those providing services or intending to provide services can informally discuss the position with ATVOD by contacting [notifications@atvod.co.uk](mailto:notifications@atvod.co.uk). However, the responsibility to satisfy the relevant legal obligations remains at all times with the provider.

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<sup>3</sup> Under the 2010 Regulations, the regulator has the power to set and collect appropriate regulatory fees from ODPS. As part of its designation by Ofcom, ATVOD has been designated the power to set appropriate regulatory fees for ODPS. ATVOD and Ofcom are currently consulting on options for the structure and level of an appropriate regulatory fees framework for the initial period of regulation up to 31 March 2011. A final decision on what regulatory fees will need to be paid by ODPS providers is expected to be made in late May/early June 2010.

## Making a notification

7. In order to satisfy the obligation to notify, a Service Provider must complete a Notification Form ( a copy of this can be found at [www.atvod.co.uk](http://www.atvod.co.uk) or is available on request from [notifications@atvod.co.uk](mailto:notifications@atvod.co.uk) or by post from ATVOD, Thames Court, 1 Victoria Street, Windsor, Berkshire, SL4 1YB) and submit a hard copy of that completed form to ATVOD (as the appropriate regulatory authority) at:

ATVOD Notifications  
Thames Court,  
1 Victoria Street,  
Windsor,  
Berkshire,  
SL4 1YB

8. Following the ATVOD/Ofcom joint consultation on regulatory fees (see footnote 3), and subsequent decision, ATVOD will issue an invoice for the appropriate regulatory fee to service providers that have notified their services.

## Failure to Notify an ODPS

9. If any person appears to ATVOD to be providing an ODPS, it has the power under the Act to request any information that would allow it to establish whether or not this is the case. On receipt of this information, ATVOD will assess the information and reach a decision on whether or not the service does in fact fall under the Regulations. If it does, the Service Provider will be informed and required to complete the notification process and, when requested to do so, pay the appropriate Notification Fee. If the service does not fall under the Act, the provider will be informed that the service does not need to be notified. It should be noted that as well as the power to seek information from potential service providers, ATVOD is able to take appropriate steps to take enforcement action against service providers who appear to be providing a service subject to regulation and have failed to notify the service to the regulator. In addition, ATVOD can refer decisions on notification to Ofcom (see paragraph 11 below).
10. If, in addition to being a Service Provider, you are also involved in providing access to another ODPS, for instance by means of providing a platform for that service, but believe that editorial responsibility for that ODPS lies with a third party, this should be indicated in the appropriate place on the Notification Form.

## Appeals to Ofcom

11. Whether or not a service falls within the definition of an ODPS may be subject to an appeal to Ofcom. An appeal may arise where ATVOD has made a decision that a service falls under the Act and the provider of the service or another person (when

Ofcom is satisfied that that person has a direct interest in the matter) requests that Ofcom reviews this decision, in accordance with Ofcom's procedures. Whether or not to accept a request for appeal is at Ofcom's discretion. Appeals will be conducted in accordance with Ofcom procedures. These will set out the timeframes for requesting an appeal and submitting the appropriate documentation. Ofcom's decision will be final and binding.

## Additional Notifications in relation to Significant Changes

12. Service Providers are also required to make additional notifications to ATVOD where, having already notified a particular service, they intend to
  - a. make changes that would result in the ODPS being significantly different; or
  - b. intend to cease provision of the ODPS.

In such circumstances, the notification must clearly identify the service in question and explain how the ODPS will be significantly different or state the Service Provider's intention to cease to provide the service (as the case may be).