

**ATVOD**

THE AUTHORITY FOR TELEVISION **ON DEMAND**

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# How to notify

**Edition 1.3**

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## Background

1. The Communications Act 2003 (“the Act”) was amended by the Audiovisual Media Services Regulations 2009<sup>1</sup> and the Audiovisual Media Services Regulations 2010<sup>2</sup>. 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) was 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 intends to provide (see below), is an ODPS.
3. Any provider of a service that is an ODPS is subject to various legal obligations. A summary of these obligations is available on the ATVOD website under Rules & Guidance<sup>3</sup>. They include the obligation to notify the service in advance to ATVOD (see paragraphs 7 - 8 below).
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 are required to pay an annual regulatory fee<sup>4</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 whether the service is an “on-demand programme service” (ODPS), as defined in section 368A of the Act. In order to assist providers in assessing whether a service is an ODPS, ATVOD has published guidelines entitled ‘Guidance on who needs to notify’<sup>5</sup>. As stated above, where the service to be provided is an ODPS, the person with editorial responsibility for that service must give an advance notification to ATVOD. This should be done at least 10 working days before beginning to provide the service.

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

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

<sup>3</sup> See <http://www.atvod.co.uk/rules-and-guidance>

<sup>4</sup> See <http://www.atvod.co.uk/regulated-services/regulatory-fees>

<sup>5</sup> See <http://www.atvod.co.uk/regulated-services>

6. Before reaching a decision on whether or not a service will be within scope as an ODPS those 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.

## Making a notification

7. In order to satisfy the obligation to notify, a Service Provider must complete a Notification Form. We recommend that you do this using the [Online Notification Form](#)<sup>6</sup> available on our website. A print version is also available on request from [notifications@atvod.co.uk](mailto:notifications@atvod.co.uk) or by post from ATVOD, 27 Sheet Street, Windsor, Berkshire, SL4 1BN. If using a print copy, it must be sent to ATVOD at the above address.
8. Each year, ATVOD will issue an invoice for the appropriate regulatory fee to service providers that have notified their services<sup>7</sup>. The fee tariff for the current year is published at <http://www.atvod.co.uk/regulated-services/regulatory-fees>.

## Failure to Notify an ODPS

9. If any person appears to ATVOD to be providing an ODPS which has not been notified, 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 reach a decision on whether or not the service does in fact fall under the Regulations. If it does, the Service Provider may be found in breach of the obligation to notify an ODPS and the obligation to pay the regulatory fee. The Service Provider will be required to complete the notification process and, when requested to do so, pay the appropriate Notification Fee. In some cases the matter may be referred to Ofcom for consideration of a statutory sanction.

## Appeals to Ofcom

10. 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

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<sup>6</sup> See <http://www.atvod.co.uk/providers>

<sup>7</sup> Each year, ATVOD consults on the appropriate fee tariff and submits a proposal for approval by Ofcom,

to accept a request for appeal is at Ofcom's discretion. Appeals will be conducted in accordance with Ofcom procedures<sup>8</sup>.

## Additional Notifications in relation to Significant Changes

11. Service Providers are also required to make additional notifications to ATVOD where, having already notified a particular service, they intend to
  - i. make changes that would result in the ODPS being significantly different; or
  - ii. 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). ATVOD recommends that such notifications are made using the [Online Notification Form](#)<sup>9</sup> available on our website. Alternatively they can be made in writing by email to [notifications@atvod.co.uk](mailto:notifications@atvod.co.uk) or by post to ATVOD, 27 Sheet Street, Windsor, Berkshire, SL4 1BN.

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<sup>8</sup> See <http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/appeals-procedures.pdf>

<sup>9</sup> See <http://www.atvod.co.uk/providers>