

Mr. Jeremy Hunt – MP  
Secretary of State  
Department for Culture, Media and Sport  
2-4 Cockspur Street  
London  
SW1Y 5DH

28<sup>th</sup> June 2011

Dear Secretary of State,

As Chair of the Authority for Television On Demand (ATVOD) I am responding to your open letter of 16 May 2011 on 'A Communications Review for the Digital Age'. As you would expect, the answer we are in a particularly good position to answer concerns models of self and co-regulation in the content arena:

*Q13. Where has self- and co-regulation worked successfully and what can be learnt from specific approaches? Where specific approaches haven't worked, how can the framework of content regulation be made sufficiently coherent and not create barriers to growth, but at the same time protect citizens and enable consumer confidence?*

### **About ATVOD**

As you know, ATVOD was designated by Ofcom on 18 March 2010 as the independent co-regulator for the editorial content of UK video on demand services that fall within the statutory definition of 'on demand programme services' (ODPS).

Our duties and powers derive from the Communications Act 2003, as amended by the Audiovisual Media Services Regulations 2009 and the Audiovisual Media Services Regulations 2010 ("the Regulations") which came into force on 19 December 2009 and 18 March 2010 respectively. The Act confers functions on Ofcom for the regulation of ODPS, and gives Ofcom power to delegate certain functions to an appropriate regulatory authority.

Public consultation showed widespread support for an independent co-regulatory regime working in partnership with industry to regulate ODPS. As a result, Ofcom delegated certain of its functions and powers in the regulation of ODPS to ATVOD by means of a formal designation.

In order to fulfil these delegated responsibilities, we restructured ATVOD from a self-regulatory entity to a co-regulatory body to ensure we are sufficiently independent from the

industry's commercial interests and to ensure we can work with industry to protect consumers of video on demand services. We believe that provided we are assiduous and transparent in fulfilling our responsibilities, we will gain and maintain the confidence of consumers without stifling investment and innovation in the industry.

During our first year of operations, we established our governance arrangements and have made good progress on matters such as establishing a coherent basis for funding video on demand regulation; on improving clarity over the scope of services to be regulated; on the protection of children from harmful content under the new VOD rules; and on establishing formal dialogue with industry via the ATVOD Industry Forum. We believe we have now laid the groundwork towards being an effective and valued regulator in this growing industry.

### **ATVOD's perspectives on co-regulation**

Any new regulatory intervention needs to be based on industry and consumer consensus around the scope and purpose of regulation, and should be preceded by a thorough impact assessment to ensure that the intervention properly balances benefits and costs.

Co- and self-regulation are particularly appropriate in rapidly developing sectors where the nature of services and the scope of potential consumer protection is subject to frequent change. Our experience is that co-regulation of video on demand services has proved capable of yielding nimble, economical solutions and the promise of establishing a broad consensus around light touch regulation. In our short life we have worked through some complex issues with the industry (e.g. the scope of the Regulations and determining where to draw the line on the protection of children from harmful content) in an efficient manner and have delivered more equitable funding arrangements for our second year, with concessionary rates for small scale providers and new market entrants.

We have taken a definitive stance on what video material might seriously harm children (and therefore an ODPS must make provisions so that children cannot access the material) and we suggest that in the area of child protection online some rules might benefit from greater clarity and certainty, building on the guidance we have determined.

The UK must not lose sight of the fact that the global nature of services accessible via the internet presents special challenges in respect of editorial regulation of VOD services. We are unable to regulate services sitting outside the UK which are accessible to UK internet users. We suggest that a combination of action in respect of services which are subject to ATVOD regulation and action by other internet intermediaries in support of parents will be necessary going forward. Action such as promoting use of filtering tools and greater awareness of the risks and protections that exist online will be important and complimentary to pure regulatory activity. Consideration should also be given by Government to what can be done to harmonise actions on an international level in this regard.

I hope that you find these observations useful in the next stage of your deliberations on the future regulatory regime for communications.

Yours sincerely,



**Ruth Evans**

**Chair, ATVOD**

