

13 August 2020

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Dear Guy

### **Co-regulation of video-on-demand advertising content**

In 2009, Ofcom consulted on designating the Advertising Standards Authority (“ASA”) as co-regulator of video-on-demand (“VOD”) advertising content under what was, at that time, a new statutory regime for the regulation of VOD.<sup>1</sup> The formal designation was agreed in 2010 for a period of ten years, which ends on 31 August 2020.

We consulted on the principle of designating the ASA as a co-regulator in 2009 and, to date, the ASA has raised no substantive issues of concern to Ofcom in relation to carrying out its designated duties in this area. Further, Ofcom has no record of any VOD service provider having raised substantive concerns about our current co-regulatory arrangement. I am therefore contacting you with a view to the ASA continuing its duties under a new designation, which I enclose.

### **Scope of the new designation**

Under Section 368B(9) of the Communications Act 2003 (as amended) (“the Act”), for Ofcom to designate the ASA as a co-regulator it has to satisfy itself that the ASA meets specific criteria in respect of that designation; namely, that it:

- a) is a fit and proper body to be designated;
- b) has consented to being designated;
- c) has access to financial resources that are adequate to ensure the effective performance of its functions as the appropriate regulatory authority;
- d) is sufficiently independent of providers of on-demand programme services; and
- e) will, in performing any function to which the designation relates, have regard in all cases—

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<sup>1</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/vod>

- i) to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
- ii) to such of the matters mentioned in section 3(4) as appear to the body to be relevant in the circumstances.<sup>2</sup>

Ofcom remains satisfied that each of the above criteria continue to be met as they were ten years ago. We are not aware of any substantive changes over that period that could lead to concerns over the ASA's fitness and propriety, willingness to be designated, access to adequate financial resources for regulating VOD services, independence from VOD providers, or adherence to the relevant regulatory principles. Ofcom has found nothing in the information the ASA has provided to date under its reporting obligations to Ofcom, as laid out in the (current) designation, that causes doubt on the above criteria remaining met.

Ofcom also remains satisfied that co-regulation remains the appropriate model for regulation of advertising content on VOD services, taking into account our published principles for analysing self- and co-regulation<sup>3</sup>, for the reasons set out in 2009.

On the basis of the information that Ofcom holds, we are therefore of the view that the ASA should continue to co-regulate VOD advertising content from the 1 September 2020 under the attached (new) designation.

As no substantive changes to the ASA's agreed duties and responsibilities have been made in Ofcom's drafting of the new designation, this renewal maintains the status quo.

### **Period of renewal**

In relation to on-demand programme services, which include (VOD) advertising, Section 368B(7) of the Act states that Ofcom may designate the appropriate regulatory authority for such a period as it may specify. Ofcom's initial designation of the ASA to co-regulate VOD advertising content for a period of ten years, to 31 August 2020, was therefore set at our discretion.

We consider it would be administratively beneficial to both Ofcom and the ASA for future review/renewal in this area to be aligned with that of our co-regulatory agreement for broadcast advertising content, which is next due on 1 November 2024. While there are differences between the regimes for review of the broadcast and VOD arrangements, the degree of similarity, and the fact that we have previously emphasised the value of a "one stop shop" for advertising issues, means there is merit in aligning the processes. The attached designation therefore sets the co-regulatory arrangements for VOD advertising content to continue to 31 October 2024.

Accordingly, we request that the ASA now undertakes to continue to meet the above criteria and consents to being designated by Ofcom as the appropriate regulatory authority for the purpose of

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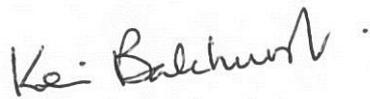
<sup>2</sup> Section 3(4) lists 13 matters to which Ofcom (or the ASA, as a designated body) must have regard in performing its duties.

<sup>3</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0019/46144/statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0019/46144/statement.pdf)

carrying out the functions that Ofcom delegates to it, to the extent specified by, and on the terms and conditions set out in the attached designation document.

I look forward to receipt of your response to this effect, following which a copy of this letter, the designation and your response will be published on Ofcom's website.

Yours sincerely

A handwritten signature in black ink that reads "Kei Balchurn". The signature is written in a cursive style and is positioned to the left of a faint, circular watermark.