

Journeyman to five-tool player? Co-regulation and audiovisual media in the UK

**ECPR Standing Group on Regulatory Governance: Third Biennial Conference 2010
Daithí Mac Síthigh**

Media regulation in the UK has traditionally seen a division between State regulation (in the case of broadcasting) and self-regulation (in the case of newspapers), both of course subject to laws of general application. However, co-regulation has emerged as a significant feature of contemporary regulation of the media. With official support and encouragement from UK and EU legislation, and political and regulatory commitment to the 'light touch', the new system for the regulation of 'video-on-demand' (VOD) as an aspect of the transposition of the Audiovisual Media Services Directive (AVMSD). This paper considers the various stages of consultation and implementation in the responsible Department, the regulatory agency Ofcom, and the designated body ATVOD, informed by the representations made by various affected parties. It is argued that audiovisual media in the UK can now be regulated by a number of bodies, with an argument being made for a new approach to categorising and analysing the relevant statutory provisions and regulatory arrangements.

The model of co-regulation for VOD is considered alongside broader ideas of the appropriate methods for regulation, technological and organisational developments in the media industries, and the impact on closely related issues such as community media and the film industry. It is argued that the AVMSD did not resolve all issues in relation to the scope of regulation and that even the most recent developments in the launch of co-regulation illustrate the issues in relation to on-demand services that remain unresolved.

**Daithí Mac Síthigh is a lecturer at the Norwich Law School, University of East Anglia.
Email: d.mac-sithigh@uea.ac.uk**

Introduction	2
1. The audiovisual media environment	2
2. The Directive	2
3. Content and VOD	3
The Directive in the UK	4
1. Implementation in the UK	4
2. Co-regulation through ATVOD	6
3. Classifying audiovisual media in the UK	6
Issues relating to implementation	9
1. Scope	9
2. Platforms	10
3. Fees	11
Regulatory Challenges	12
1. Film: cinema to DVD to films-on-demand?	12
2. Law+: the case of the personal video recorder	13
3. European works: prominence in an on-demand world	14
Conclusion	15
References	17

Introduction

1. The audiovisual media environment

It may seem as if the regulation of the still-developing video-on-demand (VOD) sector is a relatively obscure question. Much of the VOD content on cable and IPTV services in the UK, for example, is repackaged content already broadcast on linear television in the UK. However, the unfortunate prediction of a senior figure in ill-fated DTT service OnDigital that the ‘sad unhappy people who live in lofts’ seeking 200 channels and EPG features (Boddy 2004: 89) would be a marginal aspect of the media landscape is a useful reminder of the short distance between the implausible and the unremarkable. Indeed, we have already moved on from the idea of VOD as a specialist cable service to broader questions of Internet regulation. Most of the development in VOD in recent years has been on the Internet alone or in conjunction with other services such as cable. This is driven by ‘catch-up’ TV (EAO 2008) as well as other services. The consumer preference for services that are based on the browser rather than separate players has been important in the success of Hulu in the US (Rose 2008), a managed service supported by a number of broadcasters as an alternative to YouTube and other third-party services based on user-generated content. The European Commission’s says that ‘most’ of the estimated 600 on-demand services across the EU (still much fewer than the 4000-odd linear services) use the Internet or IPTV for distribution (2009: 4), rather than cable, satellite or non-Internet mobile.

Technological and cultural changes in relation to media are certainly not new, but the most recent wave of changes led the responsible ministers of Council of Europe members to agree that a new approach to defining and understanding media was now of some urgency, in a 2009 declaration on ‘a new notion of media’ (Council of Europe 2009). The pithy idea that ‘online is the new primetime’ (Fulgoni 2008), with Internet use and video viewing in particular growing, although still short of the peak reach of television, is a useful coinage, although perhaps better formulated for present purposes as ‘online is part of primetime’. Coupled with what have been suggested to be certain benefits of online advertising even with lower reach, new developments form a particular threat to the dominance of linear broadcasting. It is that relationship between linear and ‘non-linear’ audiovisual media that dominated the negotiation and agreement of the 2007 Audiovisual Media Services Directive (AVMSD) in the European Union.

2. The Directive

Three trends in the development of television broadcasting and related media have been identified: democratisation of the media more generally (i.e. that more people can create and distribute audiovisual media than ever before), the work of the TV industry to ‘hierarchize the value of images’ and protect its market, and new players such as YouTube finding a way to generate income (Marshall 2009: 46). All three of these points have been of influence in the development of the EU response through the AVMSD. The European Commission’s draft of 2005 brought into focus the division between what were then termed linear and non-linear audiovisual media services, replacing the idea of television broadcasting that had to then been the concern of the Television Without Frontiers directive. The UK legislation, the Communications Act 2003, had reflected this approach through an explicit exclusion of VOD (and indeed Internet services). The Commission’s new approach was based on some measure of technological neutrality, meaning that

linear services would be regulated in the same way (whether they were terrestrial broadcasts or live streams on the Internet), and non-linear services would be regulated too (to a lesser degree than linear services), again without regard to the method of delivery. The AVMSD was controversial, and the eventually adopted Directive of 2007 used language of 'television' and 'on-demand', with a range of recitals purporting to reassure the various industries that a light touch was the prevailing approach. The actual regulatory requirements are basic rules on identification, protection of minors and incitement to hatred (applying to all audiovisual media services) and some regulation (less intensive than in respect of linear services) for advertising and the promotion of European productions. Clauses specifying that on-demand services would need to be subject to editorial responsibility and would have to be TV-like were inserted to reassure some member states expressing concerns through the Council of Ministers. It then fell to the member states to implement the AVMSD before December 2009.

3. Content and VOD

The AVMSD and its on-demand provisions continue the trend of removing positive regulation of media while also focusing on the negative regulation of content on moral grounds. It is appropriate to give particular weight to these restrictions even if notional at this stage, as 'television as a medium has traditionally been defined by its limitations - technological, political and cultural' (Leverette 2009: 124). When legislation for cable was introduced in the UK over 25 years ago, it took a liberal (i.e. deregulatory) approach to quality and impartiality but maintained a position of moral conservatism on taste and decency (Hollins 1984: 284). The first statements of the new Secretary of State for Culture, Media and Sport in 2010 were reported by the Financial Times as somewhat deregulatory, noting that the Secretary of State said that 'while the government considered the need to ensure taste and decency was as important as ever, "more broadly speaking [the Government wants] to allow media companies greater flexibility to develop models than they previously had"' (Fenton & Bradshaw 2010). Interestingly, this topic did not appear in the final version of the Secretary of State's speech (DCMS 2010).

Ofcom's modern practice is still rather censorious, taking a free-market approach to various issues but still finding on a regular basis against free-to-air 'babe' channels and even finding against adult channels for displaying the channel's web address - on the grounds that material *on the website* would have violated the Broadcasting Code *if it had been broadcast on that channel*. And now, as on-demand services come within the Communications Act as amended, the restrictions will relate to that most 21st century of moral issues, the protection of children. However, further assessment of this point must await the formulation of appropriate guidance by ATVOD and perhaps enough adjudications by which to judge the application of the admittedly vague standards set out in the AVMSD. It should also be noted that the AVMSD also deals with incitement to hatred, a permissible ground for restricting all audiovisual media services; this has recently been an issue in relation to the Kurdish service ROJ TV, with no violation found after an investigation in Denmark but a ban enforced in Germany (European Commission 2009: 9). Incitement to hatred legislation has been a very divisive issue in the UK Parliament in recent years (in relation to sexual orientation and to religion), so dealing with this sensitive issue in the context of on-demand services may well be a flashpoint in the coming years.

New forms of distribution have over time been used as a way of challenging prevailing restrictions on content. Early cable-only and pay-TV services in the US such as HBO (Santo 2009: 23; Leverette 2009: 125) and Showtime (Hollins 1984: 183) presented material that was more 'risqué' than what would then have been permitted on network

television. On-demand services from the experimental Qube service in the early 1980s (Hollins 1984: 194) to the Canal Play web-based version of the French movie service Canal+ (Augros 2008) found that pornographic content was the most popular. Practical problems are often encountered, such as the identification during VOD trials in the UK in 1994 on whether BBFC ratings for films/videos should be applied, and if so how to transpose that to the more flexible timings of on-demand services (House of Commons 1994).

The Directive in the UK

1. Implementation in the UK

The journey of the AVMSD within the UK provides a backdrop to this analysis. Although the AVMSD deals with a number of matters requiring action by member states, the focus here is on dealing with on-demand audiovisual media services. The first stage was a consultation led by the Department for Culture, Media and Sport in 2008 (DCMS 2008). Although a formal response to the consultation has curiously never been published (other than a straightforward summary of submissions received), a ministerial statement in 2009 contains various decisions in relation to it. Although a number of matters are dealt with, the most important for this discussion is the decision that Ofcom would be given the legislative powers to arrange co-regulation of VOD, mentioning but not confirming the expectation that arrangements associated with the Association for Television on Demand (ATVOD) could be a basis for co-regulation. The statement set out a clearer expectation that the Advertising Standards Association would be responsible for regulating advertising within on-demand services.

Subsequently, Ofcom carried out a detailed consultation on VOD alone (Ofcom 2009a), with ATVOD again identified as the preferred co-regulator (subject to further negotiation and structural reforms), while the Department prepared secondary legislation to transpose the requirements of the Directive into UK law, amending (by way of the powers contained in the European Communities Act) the Communications Act 2003. A VOD Editorial Steering Group (VESG) has played a role in developing the ATVOD system and is referred to by various parties in their submissions and by Ofcom itself, although little is known regarding its role and minutes of its deliberations have not been published. It was assisted by Ofcom and the Department (Ofcom 2009b: 85). Its membership included broadcasters, associations (e.g. the Mobile Broadband Group), service providers like BT and Sky, studios/producers, and both ATVOD and the BBFC (PPA 2009: 7). Ofcom's final statement in December 2009 confirmed that discussions with ATVOD were continuing, making a number of changes to the draft guidance in a final regulatory framework (Ofcom 2009b). The key aspect of this framework is non-binding Scope Guidance, drafted with the assistance of the VESG. A further statutory instrument followed in 2010 (focusing on those matters not directly required by the Directive and thus requiring separate notification of the European Commission under the Technical Standards Directive), as did another statutory instrument on the disclosure of information (of no particular importance to this discussion). Furthermore, the actual designation of ATVOD as the regulator for VOD was made by Ofcom in March 2010. Another consultation regarding fees has recently closed; this has in fact raised questions of substance regarding both the Directive and the UK implementation and is discussed below.

It has been pointed out, correctly, that the Directive does not require co-regulation, merely encouraging it as well as forms of self-regulation (e.g. Lievens 2006: 114). It does appear

to preclude fully autonomous self-regulation, though, and it is on this basis that the UK Government and Ofcom have proceeded. Prosser suggests that the ambitions of the Commission to encourage self-regulation met a number of objections from different directions, some arguing that it was inappropriate to refer to it at all and others suggesting that the effect might be to restrict self-regulation (2008: 108-111). However, for a state such as the UK that expressed serious scepticism regarding the extension of any regulation to video-on-demand, having explicitly excluded it from the 2003 Act and campaigned against it at European level during the negotiation of the AVMSD, co-regulation has obvious appeal. Co-regulation links regulation through community (or in Lessig's term, 'norms') and hierarchy (or 'law') - although enforced self-regulation may provide for similar links (Murray & Scott 2002: 505). In legal terms, enforced self-regulation may still find itself engaged with public law within a UK context, with for example the Advertising Standards Authority being subject to (limited) judicial review in respect of its non-statutory functions for non-broadcast advertising (*R v ASA ex parte Insurance Services*). In this regard, media self-regulation may be more susceptible to oversight and scrutiny than sports governing bodies, which have managed to evade most attempts to subject them to public law processes (Anderson 2006).

Ofcom's current working understanding of co-regulation is such schemes involve 'elements of self- and statutory regulation, with public authorities and industry collectively administering a solution to an identified issue' (Ofcom 2009b: 10). While this approach is an adequate one, it is also somewhat simplistic, and it would be preferable for Ofcom to recognise the gaps between these broader categories, as set out for example in the 'Beaufort scale' of regulation (Cave et al 2008: 27). It is notable, though, that the method of implementing the AVMSD starts from the position of considering co-regulation as the solution, and some of the issues below flow from this approach. This is very different to other forms of co-regulation, where a system may be in place for some time and gains the respect or recognition of relevant parties, or is a de facto regulatory system given de jure force. In such situations, many questions regarding scope, the level of intervention and the relationship between parties may have been worked out. Co-regulation in the case of on-demand audiovisual media services is the regulatory equivalent of the fabled five-tool player in baseball, sought after at the time of drafting on the grounds that it can deal with a range of situations. It differs from the idea of the journeyman, the player who may not have been recognised as having a key role at an early stage, but becomes a relevant and potentially significant part of the wider picture over a longer period. The risk of the early move to co-regulation, though, is that the regulatory body is faced with a number of significant challenges without necessarily enjoying the legitimacy or enforcement powers to shape an emerging area, and must meet potentially contradictory expectations. In no way is it the intention of this paper to argue that early designation is itself a problem; rather, the pressing need is to pay closer attention to the process of designation and the setting of initial criteria. Following Lievens' matrix of involvement and forms of regulation (2006: 120), while the levels of involvement by Government, industry and the public are normally fixed in the cases of self-regulation and direct statutory regulation, co-regulation is argued to see public involvement preferred, but not necessarily classifiable as strong, medium or weak as a general principle. While other aspects of the implementation of the AVMSD in the UK have seen wide public interest (e.g. product placement), the process thus far has been almost entirely one of the industries obviously subject to regulation or those trying to avoid it. Therefore, the criteria used by Ofcom and the safeguards built into the new system represent the best hope at the present time for the incorporation of the public interest into the regulatory system.

Perhaps the five tools for the co-regulator are the criteria that Ofcom must use in respect of designation under section 368B(9) of the Communications Act 2003 (inserted by SI 2979/2009): that the body is a fit and proper body, has consented to designation, has access to adequate financial resources, is sufficiently independent of service providers, and will have regard to a set of principles (transparency, accountability, proportionality, consistency and ‘targeted only at cases in which action is needed’). This is an important step for co-regulation in the UK, being relatively firm statutory control of the high-level principles of co-regulation, noting that co-regulation is not even mentioned in the 2003 Act as originally promulgated. The principles are interesting, and also supported by an earlier Ofcom statement that sets out its decision-making procedures when considering the case for adopting self-regulation or co-regulation in appropriate cases (Ofcom 2008).

2. Co-regulation through ATVOD

The Association for Television on Demand (ATVOD) emerged during the Communications Bill debates in 2002, with the industry’s interest being obvious; ‘if it is effective, VOD will be free of detailed statutory requirements for content’ (Tambini et al 2008: 99). This may have been a temporary victory within the UK, but could not prevent the European Union’s subsequent intervention, helped in no small part by the dispute aired in the *Mediakabel* case regarding the regulatory status of near-VOD and the frequent complaints from broadcasters that they were subject to unfair competition from unregulated operators subject only to the minimalist requirements of the Electronic Commerce Directive (2000/31). Prior to the recent changes, the organisation was described as both having an extremely low profile and being the subject of praise from the European Commission (Woods 2008: 181-2). The early role of ATVOD was a broad one, including commercial transactions and consumer benefits (Tambini et al 2008: 99); some of these services do not fall within ATVOD’s co-regulatory role. On the other hand, other services such as mobile services, not within ATVOD’s role to date, may now find themselves subject to it. Therefore it is not an obvious situation of a self-regulatory system being co-opted or incorporated into the statutory system, but a more awkward transition between ATVOD 1.0 and ATVOD 2.0. The chair of ATVOD 1.0 criticised statutory and co-regulation as ‘costly to tax payer and industry, bureaucratic, inflexible, slow moving, anachronistic, reactive, not pro-active’ (Filkin 2005). ATVOD itself recognises the change, for example through a press release announcing its new Chair and appointments to ‘the new ATVOD’ (ATVOD 2010a).

ATVOD’s system is now based on notification, as anticipated by the 2009 Ministerial Statement and required under the amended Communications Act. For those services already in operation when the co-regulatory system came into force (18 March 2010), they were required to notify ATVOD of their service by the end of April. For new services, the requirement is to notify ATVOD in advance of the provision of the service (ten working days). If ATVOD is aware of a non-notified service, it can request information and, if the service is subject to the notification procedure (i.e. is an on-demand service for the purposes of the 2003 Act), can take initial action or refer the matter to Ofcom. Sanctions include financial penalties but ultimately the provision of a non-notified on-demand service is a criminal offence.

3. Classifying audiovisual media in the UK

It is important to recognise that although the focus of the AVMSD debate may have been on the distinction between linear and non-linear (e.g. Onay 2009, Newman 2009) , or sometimes (and in the submissions of potentially regulated services) between non-linear

and out of scope (e.g. Valcke & Stevens 2007), the true position is not so clear. The following categorisation (influenced by but not directly related to the Beaufort scale version of regulation noted above) may demonstrate the importance of a broader approach, with audiovisual media being categorised into a number of categories. Note that as a direct result of the different forms of regulation, the list does not follow a direct line from intrusive to light-touch regulation.

A1: Television (linear) with public service obligations: governed by AVMS directive; Broadcasting Code and other statutory codes (such as advertising); additional regulation by BBC Trust for BBC services. The key differences between A1 and A2 are specific statutory requirements (e.g. for Channel 4), bespoke licenses rather than the templates used for TLCS and DTSP, and some differences in respect of advertising.

A2: Television (linear) - licensed under the Communications Act as Television Licensable Content Services or Digital Television Programme Services, governed by AVMS directive; Broadcasting Code and other statutory codes (such as advertising). There are further subdivisions here that are not considered, i.e. the distinction between (1) editorial, (2) teleshopping (including certain gambling services and (3) self-promotional services, or the (now limited) exceptions for services not targeted at the UK.

B: On-demand (non-linear) - considered as such under the AVMSD and to be the subject of regulation by ATVOD.

C1: Video/DVD (non-exempt) - video works regulated under the Video Recordings Act 1984 (VRA). Subject to prior scrutiny and age ratings, but limited to physical distribution. No distinction between video, DVD or related formats. Some special conditions apply through the 1984 Act and also the amendments in the Criminal Justice & Public Order Act 1994 purporting to protect against harm.

C2: Cinema (for public exhibition) - voluntary BBFC ratings, enforced through the Licensing Act 2003 (taking over from the Cinemas Act 1985) and the licensing procedures of local authorities. This could be a separate heading, but given the strong link provided by the BBFC as dual regulator, and the normal consistency (despite the legislative differences) between the cinema and video schemes, it forms a part of type C.

D: Video games (non-exempt) - regulated through the amended Video Recordings Act through the Video Standards Council, applying a version of the former self-regulatory PEGI standards. Note that this could be considered as an aspect of category C, but the new statutory provisions inserted in the VRA by the Digital Economy Act and the very different approach of PEGI suggests that this is more appropriately considered as a separate stream.

E: None of the above (i.e. general law only) provided by a newspaper and regulated by the PCC under its Guidance Note (http://www.pcc.org.uk/assets/111/Audio_Visual_Guidance_Note.pdf)

F: None of the above (i.e. general law only including - at least in theory - Directive 2000/31/EC).

The advantages to the service provider of classification as type B have already been noticed. Although the debate regarding product placement for television was a controversial one, with the eventual result being a decision to allow limited product placement as permitted (but not required) by the AVMSD, there will be few restrictions on product placement for video-on-demand. It is no surprise, then, that an analysis in a marketing trade publication suggested that broadcasters concerned about product placement restrictions should take some comfort from the ability to sell placement opportunities without restriction for catch-up and on-demand services (Fernandez 2009). While this still presents some technological challenges (lessening due to changing methods of production and editing), it is also a potentially lucrative opportunity, particularly as other subsequent sales (e.g. DVD, certain foreign sales) can also use unrestricted placement. Type A is the only format to restrict product placement. This approach of dividing into first-run and on-demand/DVD may also become apparent in other areas of regulation, reproducing past practices of network and cable version or indeed cinema and video editions. A further advantage of type B is that, as part of the European system of media regulation, the country of origin and freedom of reception principles (also familiar in type A) will guarantee (in the normal course of affairs) unrestricted access to the markets of all other EU member states, in a way that other categories would not.

At the present time, it appears as if regulation is becoming a fundamental issue for audiovisual media in the UK. The 'new' co-regulatory bodies in PEGI (for type D) and ATVOD (for type B) show that this trend is not changing, and the BBFC is very protective of its roles in respect of cinema and video (type C), and is continuing with its non-statutory ratings for films on demand, BBFC Online. As Levy argued in 2001, even if there were to be a single regulator replacing a number of diverse regulators, this would not necessarily reduce the 'number of the multiple and sometimes contradictory objectives' that they must pursue (Levy 2001: 155). The approach of the Canadian Broadcasting Act is to set out these objectives in some detail, providing a guide for the broad regulatory body CRTC. Even there, though, this does not prevent the federal Cabinet from intervening from time to time on policy matters, which do serve to prioritise one objective over another. The UK did merge a number of bodies into the new super-regulator Ofcom in the 2003 Act (addressing Levy's point that at the turn of the century, there were 14 statutory and self-regulatory bodies in the UK (2001: 33)), but the present situation is still one of a wide range of regulatory bodies of various types. Millwood-Hargrave and Livingstone suggest that in respect of media content, there are 17 regulatory bodies in operation in the UK (2009: 34-5), although not all of these bodies deal with the audiovisual services considered in this paper. On the other hand, the BBFC has argued that a diversity of regulators is itself a method of protecting freedom of expression (BBFC 2008: 8). This may be an appropriate response to what Curtin appropriately characterises as the 'matrix era' of broadcasting, distinguishable from what in the US was the 'network era' of centralised production and mass audiences on the grounds of interactivity, dispersed production and 'diverse modes of interpretation and use (2009: 13).

Although it may have seemed that the situation is becoming relatively stable, three further complications have emerged. These issues - continuing ambiguity regarding scope, the particular position of platform operators and a new dispute not contemplated by the AVMSD of notification fees - are a useful way of appreciating how despite the low-profile nature of transposition and implementation in the UK, some fundamental questions posed during the negotiation of the AVMSD remain unanswered.

Issues relating to implementation

1. Scope

Although the high-level question of the scope of the AVMSD was a major one during its debate, with some high-profile exclusions set out in its recitals, member states still have some work to do in providing a more predictable and understandable system for defining the limits of the on-demand audiovisual media service category. This is of course subject to the other restrictions not considered in detail here, such as the requirement for the service provider to come within the jurisdiction of a particular member state. However, the current debate in the UK is best summarised by the comment in Media Week that the system for regulation on-demand services in the UK has the potential to affect the media industries 'from radio to print, to pure-play Internet companies' (Alps 2009b). Close reading of both Ofcom statements and the various submissions published on Ofcom's website indicates that many parties have met directly with Ofcom and the DCMS over the past months, with various assurances appearing to emerge from these meetings. These overlapping processes do contribute to the sense of ambiguity surrounding the question of scope.

Some concerns have been expressed regarding audiovisual material made available on the Internet in conjunction with the website of a print publication (i.e. video on the website of a newspaper or magazine). The Press Complaints Commission has already made a move into this field, and is listed as type E in the classification set out above. The PCC is the self-regulatory institution that adjudicates on complaints about material in the publications that subscribe to the scheme. Its Code is well-known but the system has been criticised as lacking by some, most recently the Media Standards Trust (2009) and (to a lesser extent) the House of Commons Select Committee on Culture, Media & Sport. The former has expressed particular concerns about the differences between the PCC and the self-regulatory system of the ASA for non-broadcast advertising, arguing that on almost every point, the ASA system is closer to the criteria for good regulation set out by the National Consumer Council. Although the system is one of self-regulation, with no statutory sanctions, it is indeed possible that the PCC is subject to judicial review and the Human Rights Act (e.g. Pinker 1999: 53), and it is indirectly recognised in statute through section 12 of the Human Rights Act (as a relevant 'privacy code'). Much more could be written on the strengths and weaknesses of the PCC, but the important point for the purposes of this analysis is that its regulatory approach is rather different to that of Ofcom or even other self-regulatory bodies like the non-broadcast aspects of the ASA.

A certain distinction between Ofcom and the PCC is already apparent. The chair of the latter has criticised (Luft 2009) the proposed (but now unlikely) role of the former in respect of independently-funded news consortia (a scheme set out in the first version of but removed in late debate from what is now the Digital Economy Act). The particular concern in that case is about impartiality rules for audiovisual content - although this will not be an issue with the simple implementation of the AVMSD, as impartiality is not an aspect of the regulation of on-demand services. Nonetheless, the potential for Ofcom regulation of audiovisual content on 'newspaper websites' is still a very realistic one, as Ofcom does appear to recognise (2009b: 31). On balance, it is difficult to avoid this conclusion, as even the AVMSD exclusion is for 'electronic versions of newspapers' (recital 21 to the Directive), which is not enough to displace the notion that TV-like on-demand services must be regulated without reference to the ownership of the service or the other services provided by it. This does not mean that all audiovisual material found on a newspaper

website will be subject to type B regulation, nor does it preclude type E regulation in general, but it does mean that some services may be within the scope of ATVOD, particularly as such services become more ambitious. If it were excluded in full, non-newspaper-affiliated services would certainly raise serious objections and have the ability to challenge the interpretation of the Directive.

A further question is that of content delivered through mobile phone networks. It was certainly the case in early statements regarding VOD self-regulation that there were two major players, ATVOD and the Independent Mobile Classification Board. The IMCB came into existence as a response to the availability of rich audiovisual content through mobile networks after 2003, driven by UK mobile network operators (Marsden 2008: 149-150). It would have been possible to designate both ATVOD and the IMCB (a version of this approach is now in place under the Video Recordings Act, with the amendments made by the Digital Economy Act facilitating two designated authorities, one for video (BBFC) and one for video games (VSC/PEGI). However, in the absence of this approach, those in the mobile industry have criticised both the designation of ATVOD (preferring to deal directly with Ofcom) and the scope of the regulatory system.

The issue here, again, is that of TV-like services. Mobile platforms are particularly suitable for what has been called 'snack TV' - short reports with a focus on news, sports and similar content (Lotz 2007: 67). This content will not necessarily be accessed through the open Internet, but through the 'walled garden' that a mobile provider may offer as a service to its customers. This was a particular issue in the early days of 3G mobile and is still a part of the mobile environment. Other services may be available on the Internet but customised for the mobile user. So are these services TV-like? Some reassurance may be offered by a new paragraph in the Scope Guidance which states in a situation where 'video content forms part of a wider content offering, which also features a range of non-video content', this should not be regulated as an on-demand service.

One unanswered - and crucial - question is that of how many services are considered as type B on-demand services for the purposes of UK regulation. The European Audiovisual Observatory survey identified 16 mainstream VOD services in the UK in early 2008 (EAO 2008: 36), ranging from the quasi-linear Top-Up TV (using spare capacity on DTT services to transmit programmes for remote recording by subscribers) to LoveFilm (film rental-download via the Internet). Other services include Virgin TV on Demand (a package of cable VOD), BBC iPlayer (catch-up VOD through various platforms) and Xbox Live (rental VOD through a games console). But this seems like an underestimate of the diversity of VOD provision, at least on the basis of the concerns expressed by some respondents to the Ofcom consultation and the open responses given by Ofcom to these concerns. Subsequent work by the EAO, based on an incomplete set of services but taking account of significant growth in Internet services, indicated over 100 on-demand services in the UK. The most recent consultation by Ofcom (on fees, with ATVOD) suggests 150 notifiable services.

2. Platforms

The result of the Ofcom consultation is that the focus will be on the regulation of VOD services and not platforms. That appears to mean that the regulated service will be the likes of 4od (Channel 4's on demand service) rather than Virgin Media's service to its customers, which includes 4od and various other services. Ofcom now clarifies that features such as designing a catalogue, providing a PIN facility, supplying age-related warnings or displaying a logo are unlikely to mean that the party engaged in such activities

controls the content for the purposes of the new provisions (Ofcom 2009b: 32). This may provide some reassurance to those providing VOD facilities without direct involvement in content selection, particularly as in the on-demand environment, branding itself is argued to be a crucial feature in the development of new business models (Ross 2009: 220). Of course, if Virgin itself provides a VOD service - by aggregating content and making it available - it may be required to notify in respect of this services. ATVOD's application materials does contemplate this type of situation, asking notifiers if they are carriers for other potentially notifiable services. Although this approach has been welcomed by enterprises such as Sky (Ofcom 2009b: 25), it is interesting to note that the original ATVOD was by HomeChoice, FrontRow, NTL, Telewest and Kingston (Filkin 2005) (joined shortly after by film VOD provider Blockbuster On Demand), and the industry representatives on the new ATVOD board are Sky, Virgin, BT and Five. There is perhaps a contradiction here and certainly the notion of industry-driven regulation is an interesting one, if one industry (cable/satellite/ISP) is the regulator and a related but separate industry (actual VOD provision) is the regulated. The nature of VOD provision itself is changing, with a move over the past year towards non-exclusive deals between broadcasters or producers and third-party VOD providers (Suter & Emsell 2009), and the launch of the web-based SeeSaw service, based on the aborted Project Kangaroo, which was the subject of an adverse finding by the Competition Commission. There has been little development in pure and archive VOD (as opposed to catch-up) by broadcasters, with much of the development falling within the area of aggregation (Pomphrey 2009), meeting consumer expectations of an easily searchable and browseable repository of content. The boundaries here remain contested and unclear.

3. Fees

Notification is not the only issue; providers must also retain recordings of all services for 42 days and pay an annual notification fee to the regulatory body. Thus, a particular critique of the regulatory system has recently emerged, that of the small or local VOD operator. Although the position regarding earlier interventions is unclear (no public record of a submission to Ofcom's primary VOD consultation, but with recent statements referring to other letters and meetings), a strident response to the most recent consultation (on ATVOD fees) was submitted by the 'United for Local Television' campaign (ULTV 2010). The organisation (made up of local TV operators of various types) has previously argued in favour of reserved DTT capacity for local services and it works alongside organisations such as the Community Media Association. The language of this statement is particularly important. The proposed notification fee of £2500 is described (40 times over 27 pages) as a 'poll tax' - a phrase that still resonates in UK political culture. Is this an overreaction (noting that charging regulatory fees to media enterprises is rather different to charging citizens an additional tax), or a fair reflection of the potential impact on small-scale communication through new technologies? ULTV's preferred option is an exemption for small providers (subject to a minor administrative fee), offering a number of formulae by which this could be calculated, including turnover or profits but not viewership or charitable status.

As ULTV would have it, small operators such as community organisations should not be "presented with the potentially realistic choice between repairing a leaking roof, assisting some of the most vulnerable in society or paying a £2,500 ATVOD levy to subsidise regulation for some of the UK's largest broadcasters" (ULTV 2010: 157). While allowing for possible overstatement in defence of the interests of its members, there is a serious point here that may in fact cause the AVMSD to be seen differently in some eyes. One of the dominant themes of the negotiation of the AVMSD was the prospect of the European

Union 'regulating the Internet' - which, as the responsible Commissioner pointed out again and again, was never the intention. The scope of the Directive was narrowed (particularly through the late introduction of language confining it to 'TV-like services') and states were discouraged from creating new licensing systems. This latter point means that alternative forms of regulation take on particular importance (Onay 2009: 344). Non-economic services are excluded, although of course this does not mean non-profit. Yet if there is to be an expensive fee charged to those that would provide on-demand services - particularly if there is anything beyond the most minimalist of definitions of scope - the idea of 'regulating the Internet' may be back on the table. There are many providers that may not object to complying with the very basic standards required by the AVMSD, but would be reluctant to pay the ATVOD fee, particularly if they operate a not-for-profit service and have been doing so without objection for some time. The careful compromise of the Directive may yet unravel. With this warning in mind, we turn to three broader challenges relating to the regulation of on-demand services, relating to the Directive and its implementation.

Regulatory Challenges

1. Film: cinema to DVD to films-on-demand?

The tradition of film regulation in the United Kingdom is a very different one. As set out above, it serves as a separate class (type C) in the system of audiovisual media regulation in the UK. The approach to cinema saw the self-regulatory British Board of Film Censors (as it then was) as an influential body, sometimes engaged in direct negotiation with filmmakers over problematic scenes and, in the most part, supported by local authorities engaged in their statutory function of regulating cinemas through the Cinematographic Acts. Despite the origins of this function in the regulation of the physical premises of the cinema, it is still the legislative route by which cinema is regulated. Video, on the other hand, is the subject of a statutory regime, with the Video Recordings Act setting out the principles and major definition and the detailed regulation taking place through the BBFC, but in this case through designation as the responsible authority and ultimate enforcement through criminal law. This may be seen as an example of co-regulation, where the BBFC (with its industry origins) is independent of the State but closely connected to it through the primary legislation and the subsequent designation. The BBFC is subject to judicial review and the Human Rights Act (for certain in relation to its VRA functions), with an appeals procedure in place for VRA decisions, but is on the other hand not subject to the Freedom of Information Act.

In this context, film distributed through non-physical means proves to be an interesting challenge. The legislative scheme of the VRA is based on controlling sale and supply. It is not dissimilar in that regard to the traditional approach to controlling obscene publications in the UK, although it is more complex than such in providing for age ratings as well as the ultimate sanction of refusing classification and thus (effectively) banning it so far as legitimate channels are concerned. Although based on different assumptions, the regulation of cinema uses the requirement of cinema premises to be licensed by the local authority as a means to control the viewing of content by underage viewers or at all. Neither approach has obvious online applications, and it was some time before downloading full-length films was a realistic option for Internet users. This is not to say that alternative forms of film distribution were not explored; pay-per-view and near-VOD systems often used films. Now, though, it is a major issue for VOD itself. The response of the BBFC was to create the BBFCOnline service, which uses the same standards as are

applied for its statutory functions and even the same logos and identification cards, governed by contract between the BBFC and the content provider or VOD aggregator. Interestingly, the BBFC argues that classifications under the VRA (for physical video works) cannot be used for digital works by non-members of the BBFCOnline scheme; an interesting approach that highlights the hybrid nature of the BBFC as a private body with public functions (BBFC 2010). Alongside various studios, some aggregators (e.g. LoveFilm, BT Online) are also members of the scheme.

During the UK Government consultation on video-on-demand, the BBFC did put forward some detailed (but ultimately unsuccessful) arguments regarding its role, requesting a statutory role (under the implementation of the AVMSD or by way of amendment to the VRA), arguing in particular that some services 'create a reasonable consumer expectation of 'DVD style' regulation rather than 'TV style' regulation' (BBFC 2008). Indeed, there remains some ambiguity about on-demand film services under the AVMSD, particularly whether they are sufficiently 'TV-like' to attract regulation. While some engaged in the film VOD business may see themselves as an alternative to video stores (whether for rental or purchase), there are of course a number of TV services (i.e. movie channels) that are based on nothing but films, and as film remains a major part of VOD (particularly pure VOD rather than broadcaster catch-up), an exclusion would be a significant reduction in the remit of 'new' ATVOD. Ofcom explicitly rejected the DVD-shop analogy (2009b: 30). In 2009, 'pure' forms of VOD across the European Union saw 62% of the viewing time spent watching cinema films, both new and archive (Attentional 2009: 63). Those now in type B can of course continue to use BBFCOnline, but interesting questions may emerge as to any differences between types B and C. They will differ in terms of prior scrutiny (none for the former, required for the latter), but perhaps also the restrictions on content, as there is no textual correlation as between the VRA rules and the requirements of the AVMSD for on-demand services.

The move from video to DVD, for example, had an important impact on the sale of TV series, which was a negligible issue on VHS but has become a very significant revenue stream in the DVD world (Wass 2008: 128). This has meant that TV content has had to be classified, in the UK at least, in order to be distributed in DVD format, although there is no legal difference between VHS and DVD from a regulatory point of view. In the other direction, producers such as Disney saw the availability of cable systems (pay TV and on-demand) as a useful way to 'replace the weakest link in the distribution chain' of the video rental store (Epstein 2005: 103), and it is unclear whether on-demand will now have an impact on the DVD market itself (Ross 2009: 223). On-demand has been a useful selling point for cable (or indeed IPTV) over satellite (Lotz 2007: 131), as it is easier to provide for full two-way communications through the shared communications network of the cable or DSL provider than through satellite. The film industry has for some time used an approach of release 'windows', but the development of DVDs and now of on-demand services has had a measurable impact on the length of these windows and associated marketing and pricing strategies (e.g. Kim & Park 2008, Park 2006).

2. Law+: the case of the personal video recorder

A broader approach may also be helpful, not in understanding the specific legal requirements of the AVMSD but in situating the Directive and the new ATVOD system in a wider context that reflects the approaches of the viewer or user. Within television studies, reflections on new developments in television or on the 'post-network' age tend to bring together a number of different services. Buonanni's case study of *Curb Your Enthusiasm*,

for example, refers to the development of alternatives to traditional broadcasting being DVD, personal video recorders (PVRs) and on-demand (2008: 61). As argued above, these fall into three distinctive legal categories: C1, A and B respectively. A broader definition is that of Lotz, whose 'post-network technologies' are DVD, the Internet, video-on-demand, PVR and mobile (2007: 50).

The PVR is a particularly interesting example as although it can break the link between scheduling and viewing, with some users ceasing to watch live TV other than as an exception (Boddy 2004: 103), it is still firmly within the A category in terms of regulation. The device allows the user to record linear services for later consumption in a style that is definitively non-linear. Although the main difference between the comparable experiences in practical terms pertains to storage (PVR is based on such, whereas VOD can be more ephemeral) (Lotz 2008: 58), the regulatory approach under the AVMS system creates further separation. In the UK, it has been argued by a number of analysts that the primary forms of on-demand viewing (from the user perspective are in fact the watching of recorded content on a PVR (Enders 2009) or catch-up of recently broadcast TV programmes (Alps 2009); this is of course content regulated (in fact) as linear under the Broadcasting Code in respect of the former and (de facto) in the same fashion in respect of the latter. There is also the issue of consumer expectations, with the availability of PVRs appearing to prevent the development of subscription or per-unit charges for catch-up VOD (Pomphrey 2009). As the Directive refers to consumer expectations of regulatory protection, this point may prove to be a very significant one over time.

3. European works: prominence in an on-demand world

One of the few changes made after Ofcom's September consultation was the decision to allocate the duty to promote European works to ATVOD, rather than to deal with the matter itself as originally proposed. The record does not show any particularly detailed submissions on the point, and although the duty itself is a relatively timid one, the matter may still become an interesting one. The requirements of the original Television Without Frontiers directive regarding European works are a particular feature of European media law, and draw upon the tradition of a cultural exception to free trade found in relation to cinema films in Article 4 of the GATT and the broad exemption of cultural matters from NAFTA. In this case, although there may be disputes and imbalances between member states, the focus on preventing the dominance of Hollywood content is a clear part of the European narrative, as is the idea that content from other parts of Europe is important in a given member state. Therefore, the specific requirements of the original Directive have been given detailed consideration, and continue without amendment under the AVMSD in respect of linear services - including near-VOD, notable because one of the issues raised in *Mediakabel* was the possible difficulty of complying with this duty in an environment not directly comparable to traditional terrestrial scheduled broadcasting. However, the duty for on-demand services is a much more general one. Instead of the infamous quota found in Television Without Frontiers, member states are simply required to ensure that on-demand service providers 'promote, where practicable and by appropriate means, the production of and access to European works', and to report on the matter to the Commission.

The reason that the management of this duty in the UK is significant is that there is, as of yet, no meaningful meeting of minds on how this is to be achieved, and this is one of the areas where there was very little regulation before the AVMSD, with just France and the French Community in Belgium dealing with the matter prior to its agreement. The Directive itself offers a number of suggestions, including financial contribution (a feature

long used in Canadian broadcasting regulation and occasionally used in the UK, e.g. the contribution in lieu of broadcast time of STV to Gaelic-language broadcasting in Scotland) or the 'share and/or prominence' of these programmes within on-demand services. Of the two examples in Europe, Belgium (French) adopted technological neutrality (i.e both on-demand and linear have the same rules), while in France, we find a tax, a voluntary system (no longer in force) for investment, and a legislative provision for 'catalogue services' not utilised (Attentional 2009: 106). Further options proposed by a report for the European Commission include counting the number of titles in a catalogue, the number of hours, or the level of consumption by viewers (Attentional 2009: 344).

Conclusion

At the time of writing, the next major development in on-demand media is expected to be Project Canvas, an initiative from a group of partners including the BBC, BT, ITV and TalkTalk. This project will facilitate VOD through Internet-connected set-top boxes and is designed, in a manner of speaking, to do for on-demand services what the Freeview project did for digital linear television. Although the earlier Project Kangaroo (joint VOD efforts from the BBC, ITV and Channel 4) was prevented from going ahead by the Competition Commission, Project Canvas has managed to secure the cooperation of a number of different partners (although Sky and Virgin continue to criticise it), and the OFT has announced that it will not intervene at this stage. Meanwhile, the BBC iPlayer continues to be a successful service and the various forms of VOD in the UK continue to develop. However, it is not appropriate to say that on-demand audiovisual media is the only game in town. Even within VOD, the 'online' and 'TV' markets still operate in different fashions (Tambini et al 2008: 37), with differing configurations of power and control. Spending on television advertising, to the surprise of some, increased in the first quarter of 2010 (Pfanner 2010).

However, the difficult birth of VOD regulation is an important step in the evolution of media regulation. On the basis of freedom of expression concerns and other factors, media is particularly suitable or susceptible for 'alternative regulatory instruments' (Lievens 2006: 115), and the UK has seen a number of examples in place over a long period (Murray & Scott 2002: 492). The work of the Hans-Bredow Institute (Schulz & Held 2001, Hans-Bredow-Institut 2006) confirmed the range of co-regulatory and self-regulatory models in the European Union, and later work by RAND Europe explored the variety of such particularly associated with the Internet. Now, the focus should be on whether the system of regulation for audiovisual media is appropriate. Marsden has set out, in the context of the regulation of the mobile Internet, three tests for workable co-regulation (2010). These tests are genuine dialogue (including *meaningful* consultation with NGOs and the public), a clear understanding of the system, and clear lines of accountability and monitoring. While the last of these, a persistent issue in relation to emerging forms of regulation, is somewhat catered for by various mechanisms included in the amended Communications Act and Ofcom's subsequent agreements with ATVOD, the first two may still be said to be lacking, and the re-emergence of fairly fundamental concerns at the stage of the agreement of the fee structure for ATVOD is of particular concern.

It will not be until the first round of notifications are complete that we can say with anything approaching certainty that the scope of the regulatory system is the subject of an appropriate shared understanding. Many parties have pointed out the remarkably short consultation periods adopted by Ofcom in respect of the various stages of the development of the ATVOD system, although the long delay between the agreed Directive

and the introduction of appropriate secondary legislation (by no means confined to the UK) was a factor here. In this context, the above study of the implementation of the AVMSD in the United Kingdom and the recent, current and predicted challenges for the new ATVOD should form a part of continuing analysis of both the specific form(s) of co-regulation and the complexity of audiovisual media regulation more generally. The argument in this paper that audiovisual media should be seen as subject to a wide range of regulatory regimes and not just a choice between two or three highlights the importance of the boundaries set by emerging regulators and how others respond to such decisions.

References

- Alps, T. (2009a) Monetising VoD, IPTV & Webcasting. Westminster eForum 15 September 2009, pp. 15-16.
- Alps, T. (2009b) New VoD regulation poses industry-wide dilemma for media. *Media Week* 22 September, p. 17.
- Anderson, J. (2006) An accident of history: why the decisions of sports governing bodies are not amenable to judicial review *Common Law World Review* 35: 173.
- Attentional (2009). Study on the application of measures concerning the promotion of the distribution and production of European works in audiovisual media services.
- ATVOD (2010a) Announcing the new ATVOD: VoD Regulator Confirms New Chair and CEO (press release). 24 March.
- Augros, J. (2008) France - a story of love and hate: French and American cinema in the French audiovisual markets. In McDonald, P. & Wasko, J. (eds), *Contemporary Hollywood Film Industries*. London: Blackwell.
- BBFC (2010) BBFCOnline briefing. January. <http://www.bbfc.co.uk/downloads/pub/BBFCOnline/BBFC.online%20Briefing%20January%202010.pdf>
- Boddy, W. (2004) *New media and popular imagination*. Oxford: OUP.
- Buonanno, M. (2008) *The age of television: experience and themes*. Bristol: Intellect.
- Cave, J., Marsden, C. & Simmons, S. (2008) Options for and effectiveness of Internet self- and co-regulation: phase 3 final report. Cambridge: RAND Europe.
- Council of Europe (2009) 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services: A new notion of media? 29 May.
- Curtin, M. (2009) Matrix media. In Turner, G. & Tay, J (eds), *Television studies after TV*. London: Routledge.
- DCMS (2008) Public consultation on implementing the EU audiovisual media services directive. 25 July. http://webarchive.nationalarchives.gov.uk/20100407120701/http://www.culture.gov.uk/images/consultations/AVMS_Consultation_Document.pdf
- DCMS (2009) Summary of responses to the public consultation on implementing the Audiovisual Media Services Directive. http://webarchive.nationalarchives.gov.uk/20100407120701/http://www.culture.gov.uk/images/publications/summary_report.pdf DCMS (2010) Media keynote speech (Jeremy Hunt). 8 June.
- Enders, C. (2009) Monetising VoD, IPTV & Webcasting. Westminster eForum 15 September 2009, p. 8.
- Epstein, E. (2005) *The big picture: money and power in Hollywood*. New York: Random House.
- European Commission (2009). Seventh report from the Commission on the application of Directive 89/552/EEC. COM(2009) 309.
- Fenton, B. & Bradshaw, T. (2010) Hunt outlines lighter-touch regulation for broadcasters. *Financial Times* 9 June.
- Fernandez, J. (2009) VOD offers ideal home for product placement revenue stream. *Marketing Week* 32(12): 24.
- Filkin, E. (2005) Regulatory forbearance in operation (presentation slides). June. <http://www.oecd.org/dataoecd/14/47/34985339.pdf>
- Fulgoni, G. (2008) Online is the new primetime. ComScore.
- Hans-Bredow-Institut (2006) *Study on co-regulation measures in the media sector*. http://ec.europa.eu/avpolicy/docs/library/studies/coregul/final_rep_en.pdf
- Hollins, T. (1984) *Beyond broadcasting: into the cable age*. London: BFI.
- Home Office (1998) Broadcasting in the 1990s. November. Cm 517.
- House of Commons (1994) Video on demand. 9 May. Research Paper 94/68.

- Kim, E. & Park, S. (2008) Distributing TV dramas in the digital environment: a Korean case. *Asian Journal of Communication* 18(2): 137-154.
- Leverette, M. (2009) "Cocksucker, Motherfucker, Tits". In Leverette, M., Ott, B. & Buckley, C. (eds), *It's not TV: watching HBO in the post-television era*. New York: Routledge.
- Levy, D. (2001) *Europe's digital revolution: broadcasting regulation, the EU and the nation state*. London: Routledge.
- Lievens, E. (2006) Harmful new media content: the latest regulatory trends. *Communications Law* 11(4): 113-123.
- Lotz, A. (2007) *The television will be revolutionized*. New York: NYU Press.
- Luft, O. Ofcom expansion has risks for free speech. *Press Gazette* 3 December. <http://www.pressgazette.co.uk/story.asp?sectioncode=1&storycode=44739&c=1>
- Marsden, C. (2008) Mobile content: IMCB. In Marsden et al (eds), Options for and effectiveness of Internet self- and co-regulation: phase 2 case study report. Cambridge: RAND Europe.
- Marsden, C. (2010) The mobile Internet and net neutrality: 'Abandon Hope All Ye Who Enter Here?'. 25th BILETA Conference, University of Vienna.
- Marshall, D. (2009) Screens: televisions dispersed 'broadcast'. In Turner, G. & Tay, J (eds), *Television studies after TV*. London: Routledge.
- Media Standards Trust (2009) *A more accountable press: is self-regulation failing the press and the public?* <http://www.mediastandardstrust.org/System.aspx/GetFile.aspx?id=141>
- Millwood-Hargrave, A. & Livingstone, S. (2009) *Harm and offence in media content: a review of the evidence*. Bristol: Intellect.
- Murray, A. & Scott, C. (2002) Controlling the new media: hybrid responses to new forms of power. *Modern Law Review* 65(4): 491-516.
- Newman, E. (2009) EC regulation of audio-visual content on the Internet. In Edwards, L. & Waelde, C., *Law and the Internet*, 3rd edition. Oxford: Hart.
- Ofcom (2008) Identifying appropriate regulatory solutions: principles for analysing self- and co-regulation. 10 December.
- Ofcom (2009a) Proposals for the regulation of video on demand services. 14 September. <http://www.ofcom.org.uk/consult/condocs/vod/vod.pdf>
- Ofcom (2009b) The regulation of video on demand services. 18 December. <http://www.ofcom.org.uk/consult/condocs/vod/statement/vodstatement.pdf>
- Ofcom (2010) Proposals for the setting of regulatory fees for video on demand services for the period up to 31 March 2011. 26 March. http://www.ofcom.org.uk/consult/condocs/vod_proposals/vod_proposal.pdf
- Onay, I. (2009) Regulating webcasting: an analysis of the Audiovisual Media Services Directive and the current broadcasting law in the UK. *Computer Law & Security Review* 25: 335-351.
- Park, S. (2006) A study on the relationship between movie production, distribution and the aftermarket. *Media Economics and Culture* 4(1): 7-41.
- PCC (undated) Guidance Note on the extension of the PCC's remit to include editorial audio-visual material on newspaper and magazine websites. http://www.pcc.org.uk/assets/111/Audio_Visual_Guidance_Note.pdf
- Pfanner, E. (2010) TV, the 'old medium', holds its own in an ad spending recovery. *New York Times* 13 June. <http://www.nytimes.com/2010/06/14/business/media/14adspend.html>
- Pinker, R. (1999) Human rights and self-regulation of the press. *Communications Law* 4: 51.
- Pomphrey, G. (2009) Channelling on-demand: Video-on-demand services are becoming ubiquitous, taking many forms across Europe. *Digital Television Europe* 291: 10-17.
- PPA (2009) Response to Ofcom consultation. October. http://www.ppa.co.uk/legal-and-public-affairs/ppa-responses-and-evidence/~media/Documents/Legal/AVMS/PPA_SubmissionAVMS_Ofcom09_Final.ashx

- Prosser, T. (2008) Self-regulation, co-regulation and the Audio-Visual Media Services Directive. *Journal of Consumer Policy* 31: 99-113.
- Rose, F. (2008) As seen on TV. *Wired* October, pp. 136-143.
- Ross, S. (2009) *Beyond the box: television and the Internet*. New York: Wiley.
- Santo, A. (2009) Para-television and discourses of distinction: the culture of production at HBO. In Leverette, M., Ott, B. & Buckley, C. (eds), *It's not TV: watching HBO in the post-television era*. New York: Routledge.
- Schulz, W. & Held, T. (2001) *Regulated self-regulation as a form of modern government*. Hamburg: Hans-Bredow Institute.
- Suter, T. & Emsell, J. (2009) The future is open. *Television* 46(10): 12-13.
- Tambini, D., Leonardi, D. & Marsden, C. (2008) *Codifying cyberspace: communications self-regulation in the age of the Internet*. London: Routledge.
- ULTV (2010) Response to proposals for the setting of regulatory fees for video on demand. 7 May. http://www.ofcom.org.uk/consult/condocs/vod_proposals/responses/ULTV.pdf
- Valcke, P. & Stevens, D. (2007) Graduated regulation of 'regulatable' content and the European Audiovisual Media Services Directive. *Telematics & Informatics* 24: 285-302.
- Wasser, F. (2008) Video and DVD: Hollywood retools. In McDonald, P. & Wasko, J. (eds), *Contemporary Hollywood Film Industries*. London: Blackwell.
- Woods, L. (2008) Internet protocol TV: ATVOD. In Marsden et al (eds), *Options for and effectiveness of Internet self- and co-regulation: phase 2 case study report*. Cambridge: RAND Europe.