



THE AUTHORITY FOR TELEVISION **ON DEMAND**

**Minutes of the ATVOD Industry Forum
held on 29 January 2013 between 11am and 1pm
at New Broad Street House**

Present and in attendance:

Please refer to attached list – annex 1

1. Minutes of Meeting held on 16 October and matters arising

It was noted that a few comments had been received on the minutes when initially circulated to Members and that these had been incorporated. The minutes were approved and would be published as approved on the ATVOD website. It was noted that ATVOD had circulated a note after the October meeting, to explain the reporting changes arising from the ATVOD 2012-15 European Works Plan and reiterate the format of reporting requirements to all service providers.

2. ATVOD Update

ATVOD's Chief Executive gave a presentation on progress with ATVOD's work since the last Forum meeting – see annex 2. Throughout the update questions were taken and the following points were noted from discussion:

- a) **Notifications** – Members noted that 211 services were currently notified, which included some churn of withdrawals and new notifications.
- b) **Appeals** – Members noted that Ofcom had published its appeal decisions in relation to Channel Flip (upheld), BBC Worldwide: Top Gear and BBC Food on You Tube (upheld) and the Business Channel (not upheld). It was noted that there were still three outstanding appeals with Ofcom.
- c) **Complaints** – Members noted that there had been 668 complaints in 2012. It was noted that two complaints had been found not in breach following a full investigation.
- d) **Enforcement** – Members noted that ATVOD continued with its investigations in relation to compliance with Rule 11 (the protection of children). ATVOD had found 13 services in breach, four of which had been referred to Ofcom for sanction having failed to become compliant in accordance with an enforcement notice (one subsequently became compliant). Ofcom had issued sanctions in the form of fines in relation to three services. One sanction decision was outstanding.
- e) **ATVOD 2012-15 European Works Plan** – Members noted that in accordance with the European Works plan, before the end of January all service providers would be informed of ATVOD's intention to issue in July a demand for information on the provision of European Works on ODPS during 2012; and

- f) **Independent Director recruitment** – Members noted that ATOVD had successfully recruited Paul Whiteing as an Independent Director to replace Sara Nathan. It was noted that Kerry Kent had represented the Industry Forum on the recruitment panel.

3. Notification Requirements (“Multiple Services”) Consultation

Members noted that ATVOD had published the consultation statement on 28 January 2013. Members noted that the central proposal set out in the statement would allow a service provider to identify all outlets as constituent parts of a single service regardless of any differences in the catalogues. It was noted that the published statement addressed concerns expressed in the consultation regarding reporting requirements with regard to third party platforms and postponed a final decision on whether to adopt the guidance until after the conclusion of the Fees consultation. It was hoped that this postponement would give stakeholders an opportunity to express a view informed by the likely impact of the proposal on fees.

4. 2013-14 Fees Consultation

Members noted that the Consultation on Fees for 2013-14 would be published in February and the resulting tariff would be effective as from 1 April 2013. Members noted that the consultation would include two main options, both of which would maintain the current banded approach based on provider revenue. One option was to keep the existing notification requirements and reduce fees across the board by 3%. The second main option was to adopt the proposed new notification requirements and modify the fee structure so that additional service fees were replaced by a supplement for those operating across multiple outlets. The second option had been designed to be simple and would not see fees rise for smaller providers or for those operating through a single outlet. It was noted that the majority of providers would pay less, some would pay the same and some Super A and A rate providers would pay a higher fee. It was noted that the aim of the change was not to reduce fees of multiple services providers but to remove the administration burden on multiple services providers by no longer requiring them to compare catalogues of programmes across multiple outlets.

It was noted that the consultation sought stakeholder views on an online notification/data submission facility, the criteria for group cap qualification, discretion to remunerate a non-independent Director if necessary to attract candidates from smaller scale providers and how to pursue further an audience based metric for fees.

One member questioned how ATVOD would agree the definition of wholly owned in relation to the group cap qualification criteria. It was noted that ATVOD would be prepared to investigate widening the qualification criteria if there was enough interest from industry and if ATVOD could be certain of the wider impact on fees. It was suggested that ATVOD might align any definition of ‘control’ with that developed by Ofcom.

One member queried why ATVOD had modified the proposal to make a retrospective notification in respect of third parties. It was noted that responses had indicated that this would be difficult to do and so therefore the requirement was now to continue to make notifications of services under direct control immediately, but remove any requirement to notify in respect of third parties.

Another member queried whether ATVOD considered other possibilities for the collection of fees, such as flat rates or a bond system for those services likely to cause complaints. It was noted that ATVOD had worked with the Industry Forum (including through the Fees Working Party) to review alternative options for collection of fees. Equity issues were at the forefront of such activity. ATVOD would continue to work with industry to identify appropriate options and would consult annually.

The Forum was asked to let the Chair know if they required an additional meeting to discuss the consultation and were encouraged to respond.

5. Access Services Update

It was noted that there had been a limited response to the Access Services Survey, with 17 out of 81 service providers responding, and that there were growing calls from disability advocacy groups for wider industry standards and access services quotas. The Survey did demonstrate an increase in the level of provision in 2012, however this was confined to a relatively small number of services and service providers. The Industry Forum was asked to consider whether ATVOD might make responses to future surveys compulsory by using a demand for information under s368O of the Communications Act, or if voluntary data requests should continue. The Forum suggested that linking requests for responses to other data gathering exercises would be helpful to providers if such a route was to be taken.

The Industry Forum was also asked to consider whether ATVOD should seek further opportunities to highlight best practice, in order to encourage other service providers to improve their performance. Members were keen to demonstrate the level of access services provided and felt that ATVOD should do all it could to highlight best practice. Members felt this was preferable to access services quotas being imposed on providers.

Members agreed that ATVOD and industry, via the working group, should continue to drive forward technical standardisation and identify other innovative alternatives for access services provision. It was agreed that, should access services quotas be imposed, ATVOD and industry would try to ensure that they are proportionate, with appropriate thresholds and lead in time prior to implementation.

The Forum wished to gather more information on provision from service providers to be able to provide a complete picture of current provision to Government, ahead of the white paper. The Chair encouraged all service providers to send information on current provision to the ATVOD CEO as soon as possible.

6. Scope Working Party

Members noted the minutes of the October and November working party meetings which had been circulated with the agenda and a verbal update on the working party. It was noted that the working group membership had been expanded and that the group were making good progress towards a draft on which to consult.

7. ATVOD Research – Porn and Hatred Online

Members noted that ATVOD had commissioned research to establish the degree of public awareness of the availability of R18 content online and the extent to which the UK public regard the protection of minors from such content as important. The research was conducted on 26-27 September 2012 and involved responses from a demographically based sample of 2019 adults in Great Britain. Members noted that the research revealed:

- 77% of British adults think hardcore porn videos are easy for children to see online;
 - 88% of British adults think it is important that UK websites offering porn-on-demand are required to take the steps set out in the ATVOD Rules and Guidance – such as restricting access, to credit card holders or by checking information against a reliable database, e.g. the electoral roll - to ensure that under 18s do not normally see hardcore porn material;
 - Women are particularly concerned, with 94% saying the measures required by ATVOD are very or quite important (with 82% specifically saying they are very important);
 - Overall, 69% of British adults say the measures required by ATVOD are ‘very important’;
- and
- Views are broadly the same for adults with or without children.

Members noted that in commissioning the research ATVOD wanted to ensure that it was targeting its resources on issues of importance to consumers. A Member was concerned that the research targeted UK only providers, however recognised that ATVOD’s remit was UK only based.

8. Public Policy Issues

Members noted that given the ongoing Communications Review by DCMS, the recent publication of the Leveson Report and recent enforcement activity in relation to breaches of Rule 11 (serious impairment to under 18s), ATVOD sought the views of the Forum on the following three areas in which it intended to develop a public policy position. Points noted arising from discussion of the three areas were as follows:

(i) Approach to asymmetry between linear and VOD regulation

ATVOD was not minded to argue for VOD regulation to be brought closer to current linear TV regulation given the lack of evidence that the current differences gave rise to significant cause for concern. The Forum felt that there should not be a push for regulation to be the same, because there was no apparent concern from consumers and the industry did not believe a change was necessary. The Forum Chair suggested that if the industry wished for regulation to continue to be different for VOD then there needed to be a clarity of view and clarity over reasoning, so that the Forum could support ATVOD in discussions with DCMS.

(ii) Approach to press/news regulation

ATVOD sought the Forum’s views on the position ATVOD might adopt in relation to any future debate about placing ODPS provided on newspaper websites under the remit of a new press regulator (assuming such an arrangement could be made compliant with the AVMS Directive) rather than ATVOD. The Forum recognised that there was an argument for press regulation in relation to VOD to be conducted either by the press regulator or ATVOD. Either way it was likely that complications and difficulties would occur due to overlapping regulation, which would require careful management.

(iii) Approach to 'harmful' services outside ATVOD's reach

ATVOD sought the Forum's views on the following questions:

- a) *Should greater certainty be provided in relation to the statutory basis for requiring hardcore pornographic material on UK based video on demand services to be kept out of reach of children?*
- b) *Is it appropriate that content which is prohibited for sale to adults on a DVD, even in a licensed sex shop, can be made available to adults on a UK video on demand service?*
- c) *Is it too easy for those who operate pornographic websites to conceal their identity?*
- d) *Is the present criminal law – notably the Obscene Publications Act 1959 & 1964 being used to best effect?*
- e) *Can media education be the whole solution?*
- f) *Can the uptake and efficacy of parental control software be improved?*
- g) *Can a consensus be built among EU Member states?*
- h) *Should non-EU VOD services which are targeted at the UK be brought within the scope of regulations designed to protect UK consumers and children? And should UK financial institutions desist from processing payments to non-EU services operating in breach of UK law?*
- i) *Should action be taken to prevent the marketing within the UK of services operating from outside the UK which provide hardcore porn without adequate protections in place to prevent child access?*

The Forum felt that ATVOD had developed the right approach in this area and was in favour of the debate being progressed with related parties. It was commented that by raising the list of issues ATVOD was helping to identify what it could do, what other agencies could do and demonstrating ATVOD's desire for a level playing field for UK providers. It was noted that ATVOD was frequently being asked for its view, not least in relation to the impending White Paper.

A Member suggested that as well as a combination of the ideas raised by ATVOD, consideration could be given to blocking URL's to websites providing R18 images. It was noted that ATVOD believed that by targeting the payment systems for adult websites then the business model for feeder free adult websites would also be affected. It was noted that the adult industry believed that preventing access to free tube adult websites would be the most valid action to take to protect minors.

It was noted that Chris Ratcliff, in his capacity as a provider of an adult service, had hosted an adult industry round table meeting in January 2013 and that the adult industry were keen to be able to make an informed contribution to the debate.

It was noted that AITA (Adult Industry Trade Association) would be closing on 31 March 2013.

9. Ofcom Questions and Answers

The Forum welcomed Sarah Andrew and Matthew Walters from the Ofcom VOD team to the meeting. Members noted that Ofcom were considering three appeals, but could not communicate details of any case under consideration. It was noted that the Ofcom legal team were considering issues of control in relation to linear broadcasting and were likely to publish a

decision by the next Forum meeting which would provide more clarity regarding control outside the EU.

In relation to R18 issues, Ofcom welcomed ATVOD's focus on protecting minors and was interested in ATVOD's proposals in relation to payment processors. It welcomed industry feedback on how to effectively address access by minors.

Ofcom was asked whether their appeal decision in relation to BBC Food on You Tube would be the same in relation to adult industry websites offering shorter form content. Ofcom stated that each website would be considered at the time of assessment by ATVOD and that any consideration as to whether the content was TV-like would involve a comparison with programmes in a similar genre on broadcast services. A decision in relation to cooking videos should not therefore be read as a guide to any future decision in relation to adult videos.

One Member asked Ofcom a specific question in relation to Ofcom's use of article 3.2 of the AVMS Directive. Ofcom requested that this and any other technical questions were emailed directly to Sarah.Andrew@ofcom.org.uk so that the VOD team could find out answers and reply directly.

It was noted that Ofcom offered to present aspects of its work on parental controls to the Forum at a future meeting. It was noted that Ofcom was looking to understand consumer awareness of and satisfaction with parental controls, as well as examining content protection regimes internationally. Ofcom shared the view that no one measure could be the answer and that there needed to be a whole collection of measures to effectively address the R18 issues considered by the Forum earlier in the meeting.

The Forum requested, and Ofcom also agreed, to present an overview of Ofcom's work on the area of convergence at a future meeting, noting that Ed Richards was giving evidence that day to the House of Lords Communications Committee.

Ofcom noted that whilst there was presently a degree of debate over areas of convergence particularly in relation to press/news regulation, the proposals indicated in the Leveson Report stressed the need to make sure regulators worked together, and that agreements between them were clear.

10. Any other business

There were no items of other business.

Annex 1 – List of Members and Attendees at the ATVOD Industry Forum on 16 October 2012

	Name of Service Provider	Name
1.	965 TV Ltd (formerly Primetime TV Ltd)	James McCann
2.	965 TV Ltd (formerly Primetime TV Ltd)	Peter Oliver
3.	AETN UK	Cat Rogers
4.	A+E Networks UK	Krishna Sood
5.	British Telecommunications PLC t/a BT Vision	Stephen Dean
6.	Channel 4 Television	Mark Lambert
7.	Channel 4 Television	Peter Wildash
8.	Channel 5 Broadcasting Ltd	Martin Stott
9.	Chellozone	Ruth O'Farrell
10.	Community Channel	Alex Khan
11.	Discovery Communications Europe Ltd	Kerry Kent
12.	ITV Consumer Ltd	Simon Abrahams
13.	MTV Networks Europe	David Holmans
14.	Paul Raymond Publications	Paul Matthews
15.	Sapphire Media International BV (17)	Mike Sharp
16.	STV Central Ltd	Helen Alexander
17.	Turner Broadcasting	David Coughtrie
18.	Universal Pictures Subscription Television Ltd	Graeme Leversedge
19.	UTV Television	Colin Pascoe
20.	VIASAT Broadcasting UK Ltd	Julia Smetana
21.	VIASAT Broadcasting UK Ltd	Marika Von Harten
22.	Warner Bros. International Branded Services a division of WB TV Distribution Inc.	Ewan Watson

	Name of Associate Member/ATVOD representative	Name
23.	ATVOD	Daniel Austin
24.	ATVOD	Nicola Ebdon
25.	ATVOD	Ruth Evans
26.	ATVOD	Nigel Walmsley
27.	ATVOD	Gidon Freeman
28.	ATVOD	Pete Johnson
29.	ATVOD	Ian McBride
30.	ATVOD	Chris Ratcliff
31.	ATVOD	Paul Whiteing
32.	British Screen Advisory Council (BSAC)	Fiona Clarke-Hackston
33.	COBA	Adam Minns
34.	Ofcom	Sarah Andrew
35.	Ofcom	Matthew Walters