



**Minutes of the ATVOD Industry Forum  
held on 24 January 2012 between 11am and 1pm  
at Portland House, Bressenden Place, LONDON, SW1E 5RS**

Present and in attendance:

Please refer to attached list – annex 1

**1. Minutes of Meeting held on 18 October and matters arising**

The minutes were approved, subject to noting that one Member wished for the points he made in relation to the recruitment of ATVOD Directors' and other issues to be expanded in the minutes as he felt they had not been recorded sufficiently. It was noted that minutes of the previous meeting had been published on the ATVOD website, as unapproved, once circulated to Members. Members were requested that in future any comments on the minutes are made to the ATVOD Company Secretary within two weeks of circulation to Members, so that changes can be agreed with the Chair ahead of publication and circulation to the following quarterly Industry Forum meeting.

**2. Industry Ecology Paper**

Members noted the content of paper which had been drafted by ATVOD as a result of a request at the October Forum meeting which defined the different categories of service providers in the industry. Members discussed the paper circulated in advance of the meeting which defined the different categories of service providers in the industry. It was agreed this would be repeated on an annual basis and thought be given to expanding the paper to provide further context such as the geographical location of the platforms.

**3. Year Three Fees working party**

Members noted the outcome of the first four working party meetings held between September and December 2011. Members noted that the aim of the working party was to identify a fee structure with longevity taking into account the development of the industry. It was noted that any proposal made by the working party would need to be subject to a public consultation and approval by Ofcom. Over the course of the four meetings the working party had concluded that some measure of audience level was likely to be the most promising metric. On behalf of the working party ATVOD had undertaken some research with a selection of service providers to identify which audience metrics were used internally. The conclusions of which were that the number of times programme viewing began and the number of downloads were the most commonly used. Due to the significant amount of work still to be undertaken to identify a

suitable alternative metric based on audience the working party had concluded that it would not propose an alternative metric for consultation in year three. The working party would continue to work towards developing an audience based fee metric which might be considered for future years and the Forum agreed it would now be known as the ATVOD Fees working party.

Members discussed a number of issues regarding the development of alternative fee base options, key points from the discussion were:

- the group would consider options for audience figures to be aggregated across groups;
- consideration by ATVOD had already been given to smaller companies with limited ability to pay fees. Three smaller rate options had been included in the year two fee structure and it was likely they would remain in future fee consultations. Comments on the smaller rate options were welcomed as part of the Year Three Fees Consultation;
- under the current fee structure and an audience based fee structure, the largest providers paid the highest level of fees, but arguably had the most to gain from effective regulation;
- the challenge of the differences between long form and short form content would be considered carefully by the working party;
- consideration would be given when developing fees to any conclusions of the multiple services/substantially the same working party on scope; and
- consideration by the working party had been and would continue to be given to ensuring that any proposed fee metric would minimise the administrative costs of fee collection.

It was noted that one Member with an interest in smaller service providers would be willing to attend one working party meeting to discuss the particular issues relating to smaller service providers.

Members heard that ATVOD was likely to publish a six week Year 3 Fees Consultation by the end of January 2012. It was noted that ATVOD regarded six weeks as the appropriate period as the figures which underpinned the consultation were not sufficiently firm before January, and a six week consultation starting in January should enable ATVOD to publish the new fee tariff by, or shortly after, the beginning of the next regulatory year on 1 April.

#### **4. Update on Industry/ATVOD/Ofcom/DCMS Round Table**

Members noted that there had been some personnel changes at DCMS which had caused a delay in arranging the previously suggested meeting. The Forum Chair wished to develop some consensus on a combined Industry Forum view ahead of any meeting.

#### **5. COBA Proposal for Memorandum of Understanding (MOU)**

Members noted that COBA had issued a proposal for a MOU between ATVOD and Ofcom which was circulated to all Members with the papers for the meeting. This paper was replaced by a less detailed paper which was tabled at the meeting – see annex 2. Adam Minns from COBA provided Members with the reasoning behind this proposal; which was mainly to give increased

clarity to the co-regulatory process in place. It was noted that there was a precedent for such Memorandum's to codify co-regulatory processes, e.g. the ASA. One Member commented that another level of bureaucracy was undesirable. In addition he felt that rather than clarify the co-regulatory process currently in place he would prefer the role and constitution of ATVOD and what powers were required to fulfil that role appropriately be reviewed. One Member expressed the need for caution in developing too detailed processes which could lead to ATVOD being unable to have the flexibility to make appropriate decisions.

Members agreed with the proposal to develop a document to give increased clarity to the co-regulatory process. It was agreed that the basis for a MOU/operating guidelines would be discussed by ATVOD and Adam Minns before a proposal was developed for consultation with Ofcom and industry. Ofcom stated that such a document would require its approval, would be between Ofcom and ATVOD, and could only clarify the content of the designation. Ofcom also stated that the publication of its processes document would provide additional transparency in relation to Ofcom's processes.

## **6. Multiple Services/Substantially the same working party**

Members received an update on the outcome of the ATVOD/Industry Forum working party on 16 January 2012 – see annex 3. It was noted that any recommendations from the working party to change the Scope Guidance would need to be approved by the ATVOD Board and Ofcom. The first meeting focused on high level issues and considered whether there was a simpler way of applying the legislation which would be less costly for both for service providers and ATVOD. It was noted the working party would meet again in February 2012. It was noted that ATVOD would review Scope Guidance following the current round of appeals, to review lessons learnt and provide further clarification, in conjunction with representatives of the Industry Forum.

One member queried ATVOD's reference in a Determination to Recital 21 of the AVMS Directive as being 'non-binding'. ATVOD's Chief Executive noted the difference between 'Recitals' and 'Articles' in European legislation, with 'Recitals' being aids to interpretation which did not have the same status as 'Articles'. ATVOD nevertheless took full account of such Recitals when interpreting the statutory requirements.

## **7. ATVOD Update**

ATVOD's Chief Executive gave a presentation on progress with ATVOD's work since the last Forum meeting – see annex 3. Throughout the update questions were taken and the following points were noted from discussion:

- a) Access Services – a working group had been established as proposed in the published interim report on access services, to consider changes to the best practice guidelines and consider longer term issues. The working group would meet for the first time at the beginning of February 2012.
- b) ATVOD Member Recruitment Update – Members noted progress made with the recruitment of Board Directors and that a second round of recruitment was underway due to a change in circumstance of two candidates from the previous recruitment round who were no longer employed by a service provider. ATVOD were looking to recruit three non-independent Directors and were keen to welcome applicants who could reflect

the views of smaller/medium size providers. Members were encouraged to ensure that co-workers were made aware of the vacancies. Interviews would be held on 22 February 2012 with appointments announced as soon as possible.

c) Notifications and Complaints – ATVOD were holding a seminar for ODPS who provided adult services focusing on compliance of Rule 11. It was agreed that ATVOD would circulate further information on complaints to Members.

d) Appeals – Following the publication of the Ofcom News Group/Sun TV appeal decision, ATVOD withdrew its Determinations in relation to similar cases involving newspaper or magazine websites. Ofcom had also recently published other appeal decisions upholding ATVOD's determinations with regard to content from MTV, Comedy Central and Nickelodeon on the Virgin Media platform. ATVOD intended to work with industry to consider possible revisions to scope guidance once the current round of appeals had been completed.

## **8. CAP Questions and Answers**

Catherine Thomas (Code Policy Executive at CAP) introduced herself to the Forum, provided a summary of the work of CAP and how it links with the ASA and Ofcom. It was noted that all services notified to ATVOD were subject to appendix 2 of the CAP Code as well as the self-regulatory section of the CAP Code. Members noted that the Forum would become a Member of CAP if CAP approved the application from the Forum to appoint Guy Wheeler as their representative on CAP at their meeting on 2 February 2012. Members were requested to direct any queries on CAP to Guy Wheeler, the Industry Forum representative on CAP. Members thanks Catherine for attending the meeting and agreed that she could attend future Industry Forum meetings from time to time where related issues arose.

## **9. Ofcom Questions and Answers**

Tony Close (Director of Standards at Ofcom) introduced himself to the Forum, provided an update on the work of Ofcom in this area and took a number of questions from the floor. The following points were noted:

- Following the consultation which took place a year ago, Ofcom would be shortly publishing its appeals and sanctions procedures. These would include timescales for the consideration of appeals. It was noted that these procedures had taken into account responses to the consultation. Ofcom agreed to take on board further comments from Industry Forum Members if easy to do so;
- the planned review of ATVOD's designation after two years was included in Ofcom's draft annual plan for 2012/13. Ofcom will be considering how to gather stakeholder feedback as part of this review;
- Ofcom were continuing to consider a range of appeals, as well as reviewing proposed revisions to Rules guidance, consideration of statutory sanctions and the fees Consultation;
- Ofcom were asked their position in relation to the payment of pro-rata fees. It was noted that as a result of representation from service providers ATVOD has included a proposal in the 2012-13 Fee Consultation on this issue. If responses to the consultation indicated broad support for this proposal then ATVOD would request discretion from Ofcom in relation to requests for pro-rata fees in certain limited circumstances.

**10. Any other business**

It was agreed that the Chair and Deputy Chair would stay in post until the end of the May meeting (as they were appointed in March 2011 for a 1 year term). Ahead of the May meeting Members will be asked if they wish to stand for the position of Chair, and/or Deputy Chair. If required, an election will then be held following the May meeting, with appointments made as soon as possible.

One Member requested that the ATVOD update be circulated ahead of the meeting. ATVOD agreed that this request would be considered, however could not be guaranteed.

**11. Private Member session – General discussion of VoD regulation**

It was agreed that there was no need for a meeting between the service providers present. The Chair welcomed Members to email her with any queries or comments between meetings.

**Annex 1 – List of Members and Attendees at the ATVOD Industry Forum on 24 January 2012**

<b>Name of Service Provider</b>	<b>Name</b>
1. AETN UK	Antoni Poyiadzis
2. BBC Worldwide Ltd	Adrian Dicker
3. British Sky Broadcasting Ltd ("Sky")	Lucy Wedgwood
4. British Telecommunications PLC t/a BT Vision	Stephen Dean
5. Canis Media Group (Ocean Finance & Mortgages Ltd)	Helena Brewer
6. CBS Chellozone UK Channels Partnership/ Zone Kids Ltd/ Zonemedia Broadcasting Ltd	Guy Wheeler
7. Channel 4	Mark Lambert
8. Channel 4	Peter Wildash
9. Channel 5 Broadcasting Ltd	Martin Stott
10. Columbia Pictures Corporation Ltd	Chris Roudette
11. Discovery Communications Europe Ltd	Kerry Neilson
12. Discovery Communications Europe Ltd	Jane Miller
13. FilmFlex Movies Ltd	Nazneen Hassam
14. FilmFlex Movies Ltd	Paula Holmes
15. IP Vision UK TV	Steve Middleton
16. ITV Consumer Ltd	Neale Dennett
17. Microsoft Ltd	Janet Greco
18. MTV Networks Europe	David Holmans
19. NBC Universal	Gidon Freeman
20. Nickelodeon UK Ltd	Alex Slade
21. Northern Visions	Daniel Cass
22. Portland Broadcasting Limited	Chris Ratcliff
23. Portland Broadcasting Limited	Luke Bodle

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| 24. Strictly Broadband   | Jerry Barnett    |
| 25. STV Central Ltd  | Helen Alexander  |
| 26. Tiscali UK Ltd t/a TalkTalk TV   | Rickard Granberg |
| 27. UTV Television   | Michael Wilson   |
| 28. VIASAT Broadcasting UK Ltd   | Julia Smetana    |
| 29. VIASAT Broadcasting UK Ltd   | Camilla Ebling   |
| 30. Virgin Media Ltd   | Ronee Isaacson   |
| 31. Warner Bros. International Branded Services a division of<br>WB TV Distribution Inc. | Ewan Watson      |

- | <b>Name of Associate Member/ATVOD representative</b> | <b>Name</b>      |
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| 32. ATVOD Deputy Chair                               | Nigel Walmsley   |
| 33. ATVOD Company Secretary                          | Nicola Ebdon     |
| 34. ATVOD CEO  | Pete Johnson     |
| 35. ATVOD Industry Board Member                      | Daniel Austin    |
| 36. ASA/CAP  | Catherine Thomas |
| 37. COBA   | Adam Minns       |
| 38. Ofcom  | Tony Close       |