



THE AUTHORITY FOR TELEVISION **ON DEMAND**

**Minutes of the ATVOD Industry Forum
held on 17 July 2012 between 11am and 1pm
at the Advertising Standards Authority**

Present and in attendance:

Please refer to attached list – annex 1

The Deputy Chair chaired the meeting as the Industry Forum Chair was unable to attend.

1. Minutes of Meeting held on 23 May 2012 and matters arising

It was noted that no comments had been received on the minutes when initially circulated to Members; so they had been approved by the Chair and incorporated into the version circulated for the meeting. The minutes were approved and would be published as approved on the ATVOD website.

It was noted that the Chair had considered the changes to the January Industry Forum minutes proposed ahead of the January meeting and decided not to amend the minutes. Therefore they had been published as approved, as circulated to the previous meeting.

It was noted that following the January meeting ATVOD had received a comment on the ATVOD Corporate Plan and as a result a change had been made to ATVOD's business plan to rephrase a bullet in relation to Public Policy to "Engage with industry and other stakeholders on the development of new public policy positions." The Corporate Plan was then published on 25 June 2012.

It was noted that the AVMS research paper produced for ATVOD and referred to at the January meeting was in the process of being expanded to include more member states, updated and made suitable for publication. It was expected that it will be published later in the year.

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) Publications – ATVOD expected to publish its Annual Report in mid August. ATVOD would also publish shortly a Memorandum of Understanding with the Internet Watch

Foundation which covered areas of commonality of remit, committing both parties to the sharing of expertise and information.

- b) Notifications – Members noted that 189 services were currently notified, which included a rate of churn similar to the previous year. A combination of additional services from existing providers and services from new providers had notified. It was noted that some notified services with head offices and editorial responsibility in the UK were not accessible in the UK.
- c) Appeals – Members noted that Ofcom had quashed on appeal a decision made by the ATVOD Board in January 2012 in relation to Viacom content on Sky Anytime. This decision had been referred back to the ATVOD Board for review in line with the approach set out in the BBC Worldwide / Mediaset appeal decision which had been published after ATVOD had made its Determination in relation to Sky Anytime / Viacom. The ATVOD Board would review and come to a fresh decision. Members noted that Ofcom had five outstanding appeals, which it expected to publish after the Olympics. It was noted that Ofcom had developed a KPI for responding to appeals of 60 days.
- d) Complaints – Members noted that roughly 40% of complainants to ATVOD had been dissatisfied with the initial response gained from the provider. However the majority of these complaints were out of remit. It was noted that one complaint was due to be investigated following a scope determination and one complaint had been found not in breach following a full investigation.
- e) Enforcement – Members noted that ATVOD had progressed investigations in relation to Rule 11 (the protection of children), following a seminar for providers of adult VOD services which made clear how ATVOD was interpreting Rule 11 and how to ensure their services were compliant. A full account of the investigations would be provided to the next Industry Forum meeting. One Member challenged ATVOD's interpretation of Rule 11 and suggested that some small service providers providing adult content had found their businesses unviable when attempting to comply with Rule 11. He maintained that as content from service providers and other online businesses outside ATVOD's jurisdiction could provide hardcore imagery before age verification within the UK, children would not be protected by ATVOD's enforcement of Rule 11. Members noted that ATVOD did not have authority to change Rule 11 and that as such the Member was advised to direct his concerns to the Department for Culture Media and Sport (DCMS). Members noted that in its interpretation of Rule 11, ATVOD believed that hardcore material might seriously impair children and therefore concluded that such content must be kept behind effective access controls. It was noted that as a result of the enforcement action one business had already made changes to comply with Rule 11 and others had indicated their intention to do so. ATVOD was aware of one business which had closed down and another which had moved offshore. It was also noted that Germany and France were also implementing similar controls on hardcore porn websites, though not necessarily under the AVMS Directive. Members noted that ATVOD had also issued an application for a county court judgement in relation to Rule 4 (the requirement to pay a fee) against a service provider who had failed to pay Year One fees in full.
- f) Fees Working party – Members noted the minutes of the May working party meeting which were circulated with the agenda and that Tom Dennis from Portland Broadcasting Limited had agreed to join the working party. It was noted that the next meeting of the working

party would be held in November in order to assess relevant industry developments and whether a consensus might be reached on audience based measurement. It was noted that Tom Dennis would be asking Industry Forum members to provide access to technical data to develop a paper for the working party.

3. Access Services working party

Members noted the minutes of the May working party meeting which were circulated with the agenda. It was noted that the best practice guidelines which arose from the work of the working party and had been circulated to Forum members in advance of the May meeting, had been submitted to Ofcom for approval. Once approved the best practice guidelines would be published and used to encourage Industry to follow them. It was noted that ATVOD would be issuing its 2012 access services questionnaire in July. Members were encouraged to reply so ATVOD could publish the fullest possible report on the provision of access services.

It was also noted that the roundtable meeting on technical standardisation for VOD access services across a wide variety of platforms was planned for September. It was noted that two responses to the ATVOD Designation Review had referred to concerns about a lack of industry engagement on access services. Members noted that ATVOD had taken a view on the basis of legal advice received that the Equality Act did not apply to content services such as VOD services. ATVOD agreed to circulate a summary of the legal advice it had received on VOD services and the Equality Act to Industry Forum Members. Members noted that ATVOD encouraged the provision of access services in accordance with its obligations under the Communications Act 2003.

4. Multiple Services working party

Members noted the minutes of the March working party meeting which were circulated with the agenda for the meeting. It was noted following a decision at the May Industry Forum meeting the working party would now cover scope in a wider sense. The next working party meeting would be held in early September to review whether any improvements could be made to make the scope guidance clearer, following experience gained over the last two years. It was noted that any such amendments would be subject to consultation and Ofcom approval.

Members noted that ATVOD had received legal advice in relation to the working party proposal that each service provider submit a single notification to ATVOD covering all the On Demand content it operates. It was noted that the ATVOD Board would consider whether to consult on the proposal, which would be a separate consultation to any other scope consultation and that any move to a new definition would coincide with the start of a new fee year. ATVOD agreed to circulate a summary of the legal advice it had received to Industry Forum Members.

Members noted that the impact of the proposal on the amount of fees levied by ATVOD could be minimised in a number of different ways, including by introducing a different fee for providers with multiple distribution outlets for a single service. It was noted that ATVOD would aim to include examples of the possible effect on fees in the consultation. Members were encouraged to respond to the consultation on its merits rather than potential effect on fees as the main motivation for the change was to minimise the administrative burden caused by the requirement

to assess different versions of a service to establish if the overlap between services was sufficiently high. Any potential changes to the fees structure would be the subject of a separate consultation in early 2013.

5. Planned ATVOD Research

Members considered a note regarding planned research which was circulated with the agenda. Members agreed to ATVOD's proposal to commission research to attempt to establish the degree of public awareness of the availability of R18 content online and the extent to which the UK public regard as important the protection of minors from such content.

6. Draft European Works Plan

Members considered the ATVOD Draft European Works Plan for the period to 2015, which set out a reasonable and proportionate plan for how ATVOD should discharge its European works duty over the next three years. It was noted that in drafting the Plan ATVOD had taken into account feedback from industry stakeholders on the burden placed on them by the demand for information issued in 2011 and the reporting template subsequently developed by the Commission and provided to ATVOD in late 2011.

It was noted that ATVOD did not believe that the measures adopted by France, Belgium, Germany, Spain and others were appropriate for the UK, especially given the extent to which many leading UK VOD services already provided access to European works and the nascent state of the on-demand sector. ATVOD's proposal was to base its strategy on encouragement, provision of information and collection of data. In addition, with regard to collection of data from service providers, ATVOD did not regard collection of all 14 data sets identified in the Commission template to be necessary in order to demonstrate whether its strategy was successful in ensuring that the objectives of Article 13 were being met in the UK. The draft plan therefore proposed that data was collected on the first six criteria only. Mindful of the burden placed on service providers by demands for detailed statistical data, ATVOD proposed to collect this data once every two years. It was noted that under the plan the next data collection process would take place in 2013.

Members indicated that they were content with the plan, subject to a minor revision to give more notice to service providers of the need to provide specified data, and felt that it was a proportionate approach. Members were requested to send any further comments to ATVOD by 3 August 2012. It was noted that the ATVOD Board would consider any comments made by the Industry Forum before finalising the plan.

7. Ofcom Update on the ATVOD Designation Review

Members welcomed Sarah Andrew from Ofcom to the meeting. It was noted that Sarah was a new Principal at Ofcom whose duties included looking after VOD matters and Ofcom's relationship with ATVOD.

Members noted that Ofcom hoped to publish ATVOD's designation review by the end of July 2012 and would keep the Forum informed of any changes to this timeline. It was noted that Ofcom also welcomed responses from the Forum to its designation review of the ASA. It was

noted that there was no requirement within the designation for Ofcom to review ATVOD's designation again within the ten year designation and that Ofcom would discuss with industry any proposed changes to ATVOD's designation which would impact on industry.

8. Ofcom Questions and Answers

Members noted that Ofcom was developing standardised evidence gathering procedures which would be shared with industry. It was noted that Sarah Andrew's role at Ofcom was new and she was assessing what support Ofcom could provide to ATVOD and the VOD industry which would be discussed at the next Industry Forum meeting.

Members noted that Ofcom's research into 'TV-like' services was due to be completed in August. The research covered how the different arrangements and technologies affect consumer viewing of content and therefore their expectations of regulation.

9. Frequency and nature of Forum meetings

Members considered whether the Forum should continue with quarterly meetings, or whether it would be more appropriate to have a different frequency of meetings. It was felt by all members in the room that as the Forum was now established a frequency of three meetings a year would be more appropriate. It was agreed that proposed dates for three Forum meetings in 2013 would be considered at the next Forum meeting.

Members also noted that the process of using working parties to progress specific issues had been successful and as a result the Chair and Deputy Chair were considering whether the format of Forum meetings should change in the future. For example to two open Forum meetings a year with other meetings of working parties and/or possibly a standing committee of Forum members who could progress policy issues in more detail and engage regularly with the ATVOD Board between open Forum meetings. It was felt that it was key to maintain provision of an opportunity for Members to raise concerns in an open forum. It was agreed that a fuller discussion of options for future formats of Industry Forum meetings would be undertaken at the next Forum meeting.

10. Any other business

The following items of other business were discussed:

- ATVOD should review the obligation to notify changes to the way in which services are accessed in order to provide greater clarity and consistency in this area; and
- The Chair of AITA raised concerns over advice reportedly provided to one of its members by ATVOD, relating to user generated content and whether this constituted a service. It was requested that the advice be clarified. It was noted that ATVOD was intending to review the scope guidance with the scope working party. ATVOD clarified that as each case had to be assessed individually the guidance would not be able to give a definitive answer to every potential example. This could only be given once an investigation had been undertaken and all relevant factors about the particular service had been taken into account.

Annex 1 – List of Members and Attendees at the ATVOD Industry Forum on 17 July 2012

Name of Service Provider	Name
1. AETN UK	Cat Rogers
2. A+E Networks UK	Krishna Sood
3. BBC Worldwide Ltd	Adrian Dicker
4. British Telecommunications PLC t/a BT Vision	Penny Davison
5. British Sky Broadcasting Ltd ("Sky")	Matthew Giles
6. Channel 4 Television	Mark Lambert
7. Channel 5 Broadcasting Ltd	Martin Stott
8. Community Channel	Alex Khan
9. FilmFlex Movies Ltd	Paula Holmes
10. ITV Consumer Ltd	Simon Abrahams
11. On Demand Group	Nicholas Ridley-Wilson
12. Portland Broadcasting Limited	Tom Dennis
13. Strictly Broadband	Jerry Barnett
14. STV Central Ltd	Helen Alexander
15. Universal Pictures Subscription Television Ltd	Graeme Leversedge
16. UTV Television	Colin Pascoe
17. VIASAT Broadcasting UK Ltd	Julia Smetana
18. VIASAT Broadcasting UK Ltd	Joe Groves
19. Virgin Media Ltd	Ronee Isaacson
20. Warner Bros. International Branded Services a division of WB TV Distribution Inc	Ewan Watson
Name of Associate Member/ATVOD representative	Name
21. AITA	Paul Matthews

22.	ATVOD	Chris Ratcliff
23.	ATVOD	Daniel Austin
24.	ATVOD	Ian McBride
25.	ATVOD	Nicola Ebdon
26.	ATVOD	Nigel Walmsley
27.	ATVOD	Pete Johnson
28.	ATVOD	Ruth Evans
29.	Ofcom	Sarah Andrew