



**Minutes of the
ATVOD Industry Forum
24 May 2011**

held at 43-45 Portman Square, London, W1H 6HN, between 11.00am – 1.00pm.

Present and in attendance:

Please refer to attached list – annex 1

1. Private Member session – General discussion of VoD regulation

A meeting between the service providers present was held and a separate minute recorded – annex 2.

2. Minutes of Meeting held on 7 March and matters arising

The minutes were approved and no matters arising were raised.

3. Industry Forum draft Terms of Reference

It was noted that the draft Terms of Reference had been reviewed at the March meeting, and subsequently updated to include the role of Deputy Chair and to reflect Ofcom representatives being invited to the meeting. The Forum adopted the Terms of Reference as presented.

A Member suggested that ODPS under notification investigation by ATVOD should be invited to attend the Forum.

4. Nomination of VOD industry representative on the Committee of Advertising Practice (CAP)

It was noted that CAP had been keen to secure a representative from the VOD industry. The commitment consisted of attendance at bi-monthly policy meetings. It was agreed that the Industry Forum would nominate a representative to sit on CAP. Members were asked to volunteer directly to the Secretary by 7 June 2011. If no nominations were received the Chair indicated that she would approach Members directly to secure a volunteer.

5. Associate Members

Members agreed that the Forum should reach out to other stakeholders, including platform operators, trade bodies, and new media players and ask them to attend meetings as Associate Members. It was agreed that the trade bodies would be approached for representatives and a list of relevant organisations would be circulated to Members, so that further suggestions could be made by Members.

6. Year Two Fees Consultation Statement and future planning

Members noted the following update on the draft Year Two Fees Consultation Statement:

- A third of service providers responded to the consultation, with some responses received from trade associations and others.
- The majority of respondents made no comment or were supportive of Year One costs.
- A slim majority made no comment on, or were supportive of, estimated Year Two costs. A significant minority expressed concern over level of Year Two costs. On this point ATVOD cautioned against comparisons with other EU member states based solely on registration or notification fees given other, more significant, costs of being established in some other EU Member states.
- There had been a clear balance of support for concessionary rates for non-commercial and small scale commercial providers.
- A suggestion had been made for small scale providers to have a three month grace period for trials of new services and the ability to make payments in instalments.
- The majority of responses favoured the non-concessionary rate Option B. Of those expressing a preference, marginally more preferred Option B1, with B3 a close second.
- Due to lower than projected costs and higher than projected income in Year One ATVOD believed the aggregate level of fees required in Year Two would be significantly lower than previously projected.
- The draft proposals were to be discussed by the ATVOD Board later in the day and it was hoped Ofcom approval would be formally granted on 8 June 2011, with publication immediately after.

In response to a question it was noted that it would not be possible for ATVOD to publish any further information until Ofcom approval had been granted.

It was noted that ATVOD wished to start discussing the development of a longer term solution for year 3 and beyond with the Forum as soon as possible and proposed the establishment of a working party.

7. Issues related to quota reporting

It was noted that service providers had been asked to complete a questionnaire with regard to how their service was addressing European issues. The Chair outlined how difficult and time-consuming it was for her company to provide the required information. Members asked ATVOD how it planned to use the information gathered. ATVOD expressed the need for service providers to provide the information which would help prove that the UK is fulfilling its obligations and there is no need to impose quotas in the UK.

Ofcom stated that its role was to ensure that ATVOD's plan was proportionate and reasonable. Service providers experiencing difficulty in collecting the data were requested to write to Ofcom and ATVOD so that any practical issues could be discussed.

It was agreed that future requests for information sent to service providers would be accompanied by more contextual information and that ATVOD would consider the timetabling of requests for information to reduce the burden on service providers at key points in the year.

It was agreed that European Works may be included as an item for discussion at a future meeting or sub-meeting.

8. ATVOD Update

ATVOD's Chief Executive gave an oral update on progress with ATVOD's work since the last Forum meeting. Throughout the update questions were taken from the floor. The following points were noted:

- Two scope appeals had been resolved as not upheld and six scope appeals were currently lodged with Ofcom.
- The investigations into multiple services were almost complete. ATVOD was asked to add clarifications on multiple services to the guidance.
- There had been 129 notifications in Year One with further notifications expected, mainly from the outcome of investigations into multiple services.
- 38 complaints had been processed to 30 April 2011, 27 of which had been referred to the service provider, 14 were escalated to ATVOD, 12 were out of scope and two were subject to full investigation. No breaches had been recorded.
- The initial confidential survey of major providers and platforms on access services had been completed: 8 out of 14 had responded. A report was expected by the end of June. A survey of all providers was underway which required responses by 31 July 2011. Once ATVOD had received the information it would formulate strategies as to how to promote access services which would be discussed with the Forum.
- A consultation on access services best practice guidelines closed on 12 May 2011. There had been nine responses and a statement was expected in July.

9. Ofcom Questions and Answers

Ofcom's Standards Executive introduced himself to the Forum and took a number of questions from the floor. The following points were noted:

- When deciding on scope appeals lodged with Ofcom decisions are made dependent on the facts and Ofcom does not discuss the appeals with ATVOD. All Ofcom decisions are published on its website. Ofcom was happy to discuss with stakeholders the principles relating to clip services but was clear that it had to follow procedure and therefore particular appeals would not be held up by such a discussion. ATVOD confirmed that it believed it had taken appropriate actions and decisions in this area and it would look to provide greater clarity in the guidance once Ofcom had made its appeal decisions.
- ATVOD actively investigates and monitors services to assess whether they come within scope. The list of notified service providers is normally updated seven days after a notification. Forum Members were advised to inform ATVOD of any services they were aware of which may be within scope.

- A small team at Ofcom interact with ATVOD in a variety of ways including: a fortnightly operational catch up; a bi-monthly meeting between the Ofcom team and ATVOD Chair and Deputy Chair; a quarterly meeting between an Ofcom Partner and ATVOD Chair and Deputy Chair; and a bi-annual meeting between the Ofcom CEO and ATVOD Chair.

10. Any other business

There were no items of other business raised.

Annex 1 – List of Members and Attendees at the ATVOD Industry Forum on 24 May 2011

Name of Service Provider/Organisation	Name
ABS-CBN Europe Ltd	Louis Bariuan
AETN UK	Cat Rogers
BBC Worldwide Ltd	Adrian Dicker
British Sky Broadcasting Ltd ("Sky")	Adam Kinsley
British Telecommunications PLC t/a BT Vision	Tamara Samarasinghe
Broadcasting (Gaia) Ltd/ Sapphire Media International BV (17)	Emma Bennett
CBS Chellozone UK Channels Partnership/ Zone Kids Ltd/Zonemedia Broadcasting Ltd	Guy Wheeler
Canis Media Group (Ocean Finance & Mortgages Ltd)	Helena Brewer
Canis Media Group (Ocean Finance & Mortgages Ltd)	Stuart Johnson
Channel 4	Mark Lambert
Channel 4	Hayley Smith
Channel 5 Broadcasting Ltd	Martin Stott
Columbia Pictures Corporation Ltd	Chris Roudette
Community Channel	Alex Kann
Discovery Communications Europe Ltd	Kerry Neilson
Discovery Communications Europe Ltd	Ricki Paraskevas
ITV Consumer Ltd	Alison McCann
Horse & Country TV	Richard Burdett
Microsoft Ltd	Janet Greco
MTV Networks Europe	David Holmans
Nickelodeon UK Ltd	Alex Slade
SCI FI Channel Europe LLC (NBC Universal)	Gidon Freeman
The Paramount UK Partnership (Comedy Central)	Kam Khaira
Top Up TV Europe Ltd	James Marson
Turner Broadcasting System Europe Ltd ("Turner")	Aurea Garrido
UTV Television	Michael Wilson
VIASAT Broadcasting UK Ltd	Julia Smetana

Virgin Media Ltd

Ronee Isaacson

Warner Bros. International Branded Services a division of WB TV
Distribution Inc.

Ewan Watson

In Attendance:

Name of Organisation

Name

ATVOD – Board Member

Ian McBride

ATVOD – Company Secretary

Nicola Ebdon

ATVOD– Board Member

Simon Milner

ATVOD - CEO

Pete Johnson

ATVOD - Chair

Ruth Evans

ATVOD – Board Member

Daniel Austin

ATVOD – Deputy Chair

Nigel Walmsley

ATVOD – Board Member

Sara Nathan

Ofcom – Standards Executive

Adam Baxter

CoBA (Commercial Broadcasters' Association)

Victoria Read

Annex 2 – Industry Forum – Private Members session
Minute of the Meeting and Action Points
24 May 2011

- Kerry Neilson (Discovery) introduced herself to the Group as Chair and Helena Brewer (Canis) as Vice Chair and outlined the reasoning for the private member session.
- Neilson explained that despite a number of meetings either with ATVOD or with Ofcom where the issue of fees had been discussed, there had been no real opportunity for the group to look at ATVOD in a more holistic manner and attempt to establish what the optimum way of ensuring industry buy in would be. The reason for the in camera session was to avoid a circular debate around fees which tended to happen when ATVOD staff were in the room.
- In order to stimulate debate Neilson outlined what the perceived pros and cons of ATVOD were. See below:
 - **Pros**
 - We're legally bound to have either co-reg or direct reg for video on demand
 - Co-regulation when done properly is flexible and gives industry a lot of autonomy. It can provide users with the benefit of industry expertise in adjudications. It can be adapted without an act of Parliament according to the needs of users. It can be less prescriptive than straight regulation
 - Co-regulation for broadcast advertising has worked well for a number of years
 - The Government is keen for co-regulation to work. Giving up could be counter-productive to relationships
 - Not being co-regulated could potentially be just as expensive as co-reg. In many other EU countries where there is direct regulation there is also a fairly hefty levy or a different VAT regime attached to VoD
 - We don't know how VoD regulation will develop. ATVOD may be useful if additional statutory rules are imposed in future media legislation
 - **Cons**
 - Co-reg can end up more expensive than direct regulation
 - The set-up of the organisation is key. If it doesn't fulfil the characteristics of good co-reg it's not going to work for the industry. It can't be command and control co-reg. Many people feel it is at the moment
 - There are issues with fairness when it comes to pricing
 - The co-regulator needs to be sufficiently independent of the regulator or Gov body to which it answers. The perception is that it is not sufficiently independent of Ofcom at the moment
 - Provision of services is linked to cost directly. Funding crises within the organisation have led to accusations of 'fishing' for additional funds
 - Lack of transparency is an issue

- Discussion based on the above gave rise to the following statements:

1. There needs to be more transparency

It was felt by the group that there was a lack of transparency on a number of issues such as:

- Scope – who determines what is in or out? How many investigations are there and who are they instigated by? What sort of service provider is being approached? Could the industry help to identify those services which should be approached? There should be much clearer guidance on who should be notifying and why.
- The relationship between ATVOD and Ofcom. Who defines the legal terms relating to services. How does the relationship work? Where is the interface with industry which should be present in a co-regulatory relationship?
- The legal basis is not included in adjudications at present. It would be useful to see why a decision has been reached in more detail. There should be one-to-one feedback on adjudications.

2. There needs to be a fair approach to fee levying

3. The co-regulator should be able to demonstrate independence from the regulator

Whilst members accepted that Ofcom provides the legal backstop as the regulator, they also felt that ATVOD needed to be able to challenge Ofcom when necessary, with industry's support.

4. There must be sensitivity to nascent business needs

There was concern from the group that the current structure was preventing some services from launching.

5. There should be more effort made to share expertise

There was a strong desire within the group to share expertise and experience with ATVOD. Many of those who are members of the group were highly involved in the Directive's negotiations and with the implementation process in the UK. They feel they are in a position to provide their expertise in the debate on scope. It was considered that the best way for ATVOD to gauge how it could best implement rules without having a negative effect on developing business models. The possibility of creating an additional layer

6. There should be simpler reporting systems, particularly for those members who are dealing with multiple territories

There was concern that determining what services were provided, quota reporting or access service reporting obligations were proving too onerous to business, particularly those which operate across Europe from the UK.

Action Points Arising from Discussion

- Seek an early meeting with DCMS, Ofcom and Atvod to establish how the issues raised above can be addressed.