



THE AUTHORITY FOR TELEVISION **ON DEMAND**

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**Minutes of the ATVOD Industry Forum  
held on 23 May 2012 between 11am and 1pm  
at Ofcom, LONDON,**

**Present and in attendance:**

Please refer to attached list – annex 1

**1. Nominations for Industry Forum Chair and Deputy Chair**

The ATVOD Chair announced that there had been no nominations for the position of Industry Forum Chair, therefore Kerry Kent was re-appointed for another one year term until the May Forum meeting in 2013. Members noted that Helena Brewer (Forum Deputy Chair) had stepped down as Deputy Chair as she was no longer working with an ODPS after the end of April 2012. The ATVOD Chair announced that there has only been one nomination for the position of Deputy Industry Forum Chair and therefore confirmed that Martin Stott was appointed as Deputy Industry Forum Chair for a one year term until the May Forum meeting in 2013.

The ATVOD Chair welcomed Martin Stott and gave thanks to Kerry Kent for continuing in post, which would help ATVOD's continued engagement with Industry. She thanked the Forum for its continued engagement. The ATVOD Chair and the Forum expressed its gratitude to Helena Brewer for her hard work over the last year. It was agreed that Martin's biography would be circulated to Members as soon as possible.

**2. Minutes of Meeting held on 24 January 2012 and matters arising**

It was noted that minutes of the previous meeting had been published on the ATVOD website following circulation to Members. One Member had sent some suggested amendments to the Chair in advance of the meeting. The Chair agreed to consider the suggestions, revise the minutes, and recirculate to Members. Members were reminded that any comments on minutes should be made to the ATVOD Company Secretary within two weeks of first being circulated, so that changes could be agreed with the Chair ahead of publication. Comments made after that time would not normally be accepted.

Members noted that there had not been any progress made with the Industry/ATVOD/Ofcom/DCMS Round table meeting since January 2012. The Chair informed Members that she would wait until the ATVOD designation review had been completed and Ofcom had concluded its review of appeals against ATVOD decisions before proceeding any further with this meeting.

In relation to the idea of a MOU between Ofcom and ATVOD proposed by COBA at the last Industry Forum meeting, Members noted that COBA and ATVOD had discussed the idea further and would revisit the issue following the Designation Review.

Members noted that the complaints information requested at the last meeting had been circulated to Members with the draft minutes of the previous meeting.

Members noted that the Forum was now a member of CAP.

### **3. 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) New Directors – Members noted that ATVOD's recruitment process for three new Directors had been completed in February and that Gidon Freeman, Sophie Jones and Chris Ratcliff had been appointed as non-Independent Directors of ATVOD as from 27 March 2012. ATVOD welcomed the three new Directors and expressed its gratitude to the Directors who had resigned in March 2012: Simon Hunt, Chris Loweth and Simon Milner.
- b) Corporate Plan 2012/13 – Members noted the content of the draft Corporate Plan which had been circulated with the agenda, which included a number of service standards for ATVOD going forward. In relation to ATVOD's aim to engage with relevant public policy debate Members noted that ATVOD would be as transparent as possible in sharing their position on issues of public policy with the Forum and other stakeholders. It was noted that ATVOD had conducted a review of how the Audiovisual Media Services Directive (the "AVMS Directive") had been implemented in Germany, France, the Netherlands, Ireland and Finland. It was agreed that ATVOD would publish the research on its website. It was agreed that Members could send comments on the draft plan to the ATVOD CEO by 8 June 2012.
- c) Fees Statement 2012/13 – Members noted that the statement had been published on 29 March 2011 and invoices had been issued in early May, following a period of time during which applications for lower rates should have been made. A reduction of 3.58% in fee had been achieved in each band.
- d) 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.
- e) Appeals – Members noted that the MTV/Viva appeal had not been upheld by Ofcom. It was noted that due to clarifying information being supplied to Ofcom during the appeal process, Ofcom had ruled that BBC Worldwide/Mediaset did not constitute an ODPS. ATVOD explained that had the same information been made available to ATVOD during its investigation it would also have concluded that BBC Worldwide/Mediaset did not constitute an ODPS. Members noted that Ofcom had six outstanding appeals, two of which had been put on hold pending research commissioned by Ofcom.
- f) Complaints – Members noted that ATVOD had received 185 complaints during the first four months of 2012. Of those 106 had been dealt with by the service provider and 79 had been referred to ATVOD, five of which were awaiting a scope determination. One complaint had been found 'not in breach' following a full investigation. Members noted that

ATVOD provided information on volume of complaints for information only and did not have a target for volume of complaints as it did not believe that volume of complaints was an effective measure of regulatory success. It was noted that ATVOD used resources to try and prevent breaches occurring and increase compliance with the rules. Concern was raised that ATVOD's regulatory activity in this area was perceived by some as providing effective regulation of the internet. ATVOD responded that, while its remit included certain internet based VOD services, it had no powers to regulate 'the internet' more generally and no intention to do so. Concern was raised that due to the large number of complaints directed to ATVOD which were out of remit or dealt with by the service provider, the public may not understand ATVOD's remit. ATVOD reassured the Forum that part of its role was to make sure that complaints were directed to the right place, and that a large number of complaints being dealt with successfully by the service provider having been directed to them by ATVOD was evidence of ATVOD's effectiveness.

- g) Enforcement – Members noted that ATVOD had recently undertaken enforcement action in relation to Rule 11 (the protection of children), which had resulted in a determination against Bootybox.tv as it had not placed restricted content behind secured access. ATVOD had issued an enforcement notice requesting that Bootybox.tv remove the content or put it behind access controls and Bootybox.tv had closed. It was noted that ATVOD had held a seminar for providers of adult VOD services which made clear how ATVOD were interpreting Rule 11 and how to ensure their services were compliant. ATVOD were undertaking a pro-active investigation in this area and expected to issue some preliminary views soon. Members noted that ATVOD had also undertaken enforcement action in relation to Rule 4 (the requirement to pay a fee) against five service providers who had failed to pay Year One fees. ATVOD felt that it was important to try to ensure all service providers paid the relevant fee to stop the burden of regulation from being spread across other ODPSs.
- h) Rules and Guidance – Members noted that the ATVOD Rules and Guidance had been updated in light of: ATVOD's experience in relation to Rule 6; Government's response to the Ofcom report on Sexually Explicit Material in VOD Services (Rule 11); and Ofcom 2011 guidance on commercial references in television programming (Rule 12 and Rule 13). It was noted that the revised Guidance had previously been presented to the Forum for comment in November 2011, however no comments had been received. It was noted that ATVOD would be looking to revise the Guidance again in the future and would welcome discussion with industry at an appropriate time.

#### **4. Access Services working party**

Members noted the access services working party included content providers, platform operators, access service providers, disability groups, and other interested parties (including BBC Trust and DTG). Minutes of the working party were circulated in advance of the meeting and Members noted the outcome of the working party meeting held on 8 May 2012 which had concentrated on technical issues in relation to ATVOD's draft 'best practice guidelines'. It was agreed that the ATVOD CEO would advise Adrian Dicker from BBC Worldwide Ltd of the membership of the working party.

The best practice guidelines which arose from the work of the working party had been circulated to the working party and Forum members in advance of the meeting. It was noted that

comments from the Industry Forum and from the working party would be considered together by the ATVOD Board before the final draft was approved. It was agreed that Members could send comments on the best practice guidelines to Cathy Taylor by 8 June 2012.

It was also noted that ATVOD planned to hold a roundtable meeting on technical standardisation for VOD access services across a wide variety of platforms, to share best practice and discussion around technical obstacles, especially those which prevented access services developed for linear transmission being re-used for VOD. Forum members were asked to contact Cathy Taylor if they or technical colleagues wished to attend. It was suggested that the roundtable meeting include consideration of cross-border European issues.

#### **5. ATVOD Fees working party**

Members noted that the aim of the working party was to identify a fee structure with longevity and around which an industry-wide consensus could be built. The working party had concluded that some measure of audience size was likely to be the most promising alternative metric to the current model. Through its work the working party had identified a number of issues to be overcome before an audience based metric could be proposed as a viable option. It was noted that the working party had concluded that in order to undertake further investigation into the viability of an audience based metric ATVOD would need to issue a data request (in the form of a demand for information under s368O of the Communications Act 2003) to all service providers requiring audience data for each ODPS provided. The working party had noted the burden such a request would place on service providers and was reluctant to recommend such a course of action without broad industry support.

Members considered the working party conclusions and agreed that such a data request was undesirable. In taking such a view Members acknowledged that it was proposing to keep the current fee structure for at least one more year. Members noted that without the data further developments would be delayed until industry had itself developed a consensus around audience based measurement. It was agreed that the working party should continue to meet bi-annually in order to assess relevant industry developments and identify when a consensus had been reached. It was agreed that the working party would aim to attract members with technical expertise and engage with analytical providers to develop further understand the technical difficulties and opportunities. The Forum Chair agreed to identify an international expert to join the working group. Tom Dennis from Portland Broadcasting Limited agreed to provide a technical briefing to the working group.

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

Members received an update on the outcome of the ATVOD/Industry Forum working party. It was noted the working party had developed the following draft proposal and wished to seek views of the Forum before it took the proposal further:

“Each service provider submits a single notification to ATVOD covering all the On Demand content it operates, which will include all its various brands. This content would comprise a single On Demand Programme Service, regardless of the ways in which it was divided between or distributed across different delivery mechanisms or geographical territories or which brands content is made available under”.

It was noted that the proposal aimed to remove administrative complexity for service providers and ATVOD, however the proposal would have a negative effect on ATVOD's funding of approximately £75,000, but may reduce ATVOD's administrative costs. ATVOD recommended that the introduction of a new interpretation should be only made at the start of a fee year in order to ensure minimal disruption.

Members considered the proposal and gave its support to investigating it further. 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 and that any subsequent ATVOD proposal to change the definition would be subject to public consultation prior to a final decision being made. It was noted that ATVOD would obtain separate legal advice as to whether the proposal met all legislative requirements before launching a consultation.

Members considered and agreed to a request from ATVOD to broaden the Multiple services/'Substantially the same' working party to consider other changes to the scope guidelines, provided that consideration of the 'Substantially the same' issue was kept separate and consulted on separately. Forum members were requested to volunteer to join the working party.

#### **7. Adult Industry Trade Association - rules governing adult sites**

Members considered an open letter from Adult Industry Trade Association (AITA) which had been sent to Industry and the ATVOD Board. Jerry Barnett Chair of AITA provided the Forum with a summary of his background and progress that he claimed had been made in the UK adult industry in relation to child protection. He suggested that some small service providers providing adult content had found their business unviable when attempting to comply with Rule 11 as by ensuring that no hardcore imagery could be seen before reaching age verification, customers were unwilling to pay to view content. He felt that other member states were not implementing the Directive in the same way, which would encourage UK service providers to locate elsewhere. 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. Jerry Barnett suggested that ATVOD should change its interpretation of Rule 11 and instead work with the adult industry to develop alternative forms of access controls.

Members noted that ATVOD did not have authority to change Rules 11. In its interpretation of Rule 11, ATVOD believed that hardcore material might seriously impair children and therefore it was left with no option but to conclude that such content must be kept behind effective access controls. It could not allow ODPSs to operate in a manner which allowed under 18s to view hardcore pornographic material and therefore would not consider lowering protection levels on the basis of commercial considerations. The Forum Chair encouraged adult industry service providers to engage with ATVOD and Ofcom and to identify appropriate access controls. In response, ATVOD confirmed that it had already provided clear guidance on when access controls would be considered sufficiently effective. ATVOD would nevertheless consider the issues raised by AITA at its next Board meeting in relation to how the protection of children could be improved.

## **8. ATVOD Designation Review - Ofcom**

- Members received an overview of the Designation Review from Peter Bourton from Ofcom who was leading the review. It was noted that the review focused on how the current Designation might be improved.
- Transparency – Generally the Forum had few issues with transparency. One member felt that ATVOD operated with greater transparency than many other regulators and had a good relationship with industry. Another member felt that there was a lack of clarity in relation to ATVOD and Ofcom’s respective positions in particular areas. Another member felt that ATVOD’s response to information requests and detail contained in its published scope investigations was not satisfactory. ATVOD confirmed that a full summary of each scope determination was published on its website and that details of closed investigations were included in its monthly newsletter.
- ATVOD internal governance and costs – One member suggested that the introduction of online responses to information requests was desirable although it was acknowledged that this would raise cost issues.
- Access services – Generally the Forum felt ATVOD’s work in this area to promote access services was welcomed, although one member raised concern as to duplication of work between ATVOD and the DTG.
- European works – Generally the Forum felt ATVOD’s work in this area worked well and regulation was proportionate. However, there was concern regarding disproportionate information requests being burdensome to industry. One member suggested that the introduction of an online system for providing European works data was desirable although it was acknowledged that this would raise cost issues.
- Complaints handling – Generally the Forum felt ATVOD’s work in this area was good.
- Appeals process – Generally the Forum felt communication with service providers from Ofcom was poor and timescales to undertake appeals of ATVOD decisions lacked clarity.
- Notification and scope – One member suggested that the introduction of an online notification system was desirable although it was acknowledged that this would raise cost issues. There were general concerns over the interpretation taken by ATVOD and Ofcom of “TV like” and Members were interested to know more about Ofcom’s research into this area and whether it would be shared with ATVOD.
- Fees – Generally the Forum had few issues with fees, however one Member felt the £771 fee for small businesses with a turnover in excess of £100,000 was too high.

It was noted that Ofcom hoped to publish its 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.

## **9. Any other business**

There were no items of other business.

## **Annex 1 – List of Members and Attendees at the ATVOD Industry Forum on 23 May 2012**

<b>Name of Service Provider</b>	<b>Name</b>
1. BBC Worldwide Ltd	Adrian Dicker
2. British Sky Broadcasting Ltd ("Sky")	Adam Kinsley
3. British Telecommunications PLC t/a BT Vision	Penny Davison
4. Broadcasting (Gaia) Ltd	Emma Louise Bennett
5. Channel 4 Television	Peter Wildash
6. Channel 5 Broadcasting Ltd	Martin Stott
7. Discovery Communications Europe Ltd	Kerry Kent
8. FilmFlex Movies Ltd	Paula Holmes
9. H&C TV Ltd	Richard Burdett
10. ITV Consumer Ltd	Simon Abrahams
11. Microsoft Ltd	Janet Greco
12. Northern Visions	Daniel Cass
13. Portland Broadcasting Limited	Tom Dennis
14. STV Central Ltd	Helen Alexander
15. Strictly Broadband	Jerry Barnett
16. Tiscali UK Ltd t/a TalkTalk TV	Rickard Granberg
17. VIASAT Broadcasting UK Ltd	Julia Smetana
18. VIASAT Broadcasting UK Ltd	Camilla Nygaard
19. Warner Bros	Ewan Watson
20. UTV Television	Michael Wilson
21. UTV Television	Colin Pascoe

<b>Name of Associate Member/ATVOD representative</b>	<b>Name</b>
22. ATVOD	Chris Ratcliff
23. ATVOD	Gidon Freeman
24. ATVOD	Ian McBride
25. ATVOD	Julia Homle
26. ATVOD	Nicola Ebdon
27. ATVOD	Nigel Walmsley
28. ATVOD	Pete Johnson
29. ATVOD	Ruth Evans
30. COBA	Adam Minns
31. Ofcom	Adam Baxter
32. Ofcom	Joyce Abosi
33. Ofcom	Peter Bourton