



THE AUTHORITY FOR TELEVISION **ON DEMAND**

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**Minutes of the ATVOD Industry Forum  
held on 16 October 2012 between 11am and 1pm  
at Ofcom**

**Present and in attendance:**

Please refer to attached list – annex 1

**1. Minutes of Meeting held on 17 July and matters arising**

It was noted that no comments had been received on the minutes when initially circulated to Members. The minutes were approved and would be published as approved on the ATVOD website. It was noted that ATVOD had circulated a summary of the legal advice it had received on VOD services and the Equality Act to Members on 13 August 2012.

**2. ATVOD Update**

ATVOD's Chief Executive gave a presentation on progress with ATVOD's work since the last Forum meeting – see annex 2. ATVOD expressed its gratitude to those who had taken part in the various working groups which had made significant progress in a number of areas. Throughout the update questions were taken and the following points were noted from discussion:

- a) **Notifications** – Members noted that 192 services were currently notified, which included some churn of withdrawals and new notifications. Withdrawals had been made for a number of reasons. Some had been made as it was found that they were aimed exclusively at audiences outside the EU and could not be received from within the EU using standard consumer equipment. Such services are specifically excluded from the scope of the AVMS Directive under Article 2 (6).
- b) **Appeals** – Members noted that ATVOD had reconsidered its decision in relation to Viacom content on Sky Anytime in line with the approach set out in the BBC Worldwide / Mediaset appeal decision. ATVOD had reached a new decision that the Viacom companies (MTV, Comedy Central and Nickelodeon) had editorial responsibility. The decision had been published on 15 October 2012. It was noted that there were still five outstanding appeals with Ofcom.
- c) **Complaints** – Members noted that there were 456 complaints in the first 9 months of 2012. It was noted that two complaints were due to be investigated following scope determinations and one complaint had been found not in breach following a full investigation.

- d) **Enforcement** – Members noted that ATVOD had progressed investigations in relation to compliance with Rule 11 (the protection of children). ATVOD had conducted a proactive investigation into 23 ‘adult’ services and had found 10 not in breach and 13 in breach. Of those found to be in breach, two services closed and seven became compliant in accordance with an enforcement notice. Four were referred to Ofcom for sanction having failed to become compliant in accordance with an enforcement notice (one subsequently became compliant). Ofcom reported that they had been considering sanctions but were unable to give a decision timeline to the Forum. In addition it was noted ATVOD had secured a County Court Judgement in relation to one outstanding notification fee.
- e) **Fees Working party** – Members noted an update on the working party. The next meeting of the working party would be held on 21 November 2012 in order to assess relevant industry developments and whether a consensus might be reached on audience based measurement. Members agreed that Adam Minns from COBA could join the working group as a Forum Associate Member.
- f) **ATVOD Publications** – Members noted that ATVOD had published the following:
- the **ATVOD Annual Report** on 17 August 2012;
  - the **ATVOD 2012-15 European Works Plan** on 12 September 2012, which included ATVOD’s intention to collect data for the period 1 April 2012-31 March 2013 in 2013, and to collect data for the period 1 April 2014 – 31 March 2015 in 2015. It was noted that the European Commission (EC) had indicated that it would prefer data to be collected on a calendar year basis and therefore ATVOD intended to amend its plan accordingly, subject to any feedback from the Industry Forum. Members were requested to send comments to Pete Johnson on whether a change to reporting on a calendar year basis for the years 2012 and 2014 would cause them any issues, by 2 November 2012. It was noted that ATVOD would circulate a note to explain the change and reiterate the format of reporting requirements to all service providers. It was noted that data was required for the years 2012 and 2014 as the UK would need to make its next submission to the EC in 2015. Members noted that the EC had published its report on the provision of European works in early September 2012 which suggested that a reasonable level of European works was being made. It was noted that the EC had also indicated the importance of effective monitoring and requested that service provider data be verified. The Forum considered this requirement and felt that auditing of service provider self-assessment returns would be disproportionately onerous, especially given that the same requirement did not appear to be in place for linear broadcasting; and
  - the **Access Services Best Practice Guidelines** on 12 September 2012 which had been finalised with assistance of the Industry Forum working party.
- g) **ATVOD submissions** – Members noted that ATVOD had submitted a response to the UKCISS Parental Controls Consultation and the Lords Communications Committee Call for Evidence on Convergence and Public Policy. It was noted that in making these submissions ATVOD had provided information in relation to ATVOD’s role and activities, especially in relation to protecting children. ATVOD had also outlined the limitations of the current regulatory scheme, especially in relation to non-UK services, and had set out its emerging public policy position in relation to such issues. ATVOD had referred to parental controls and media education being part of the solution, but warned that their efficacy

should not be overstated. ATVOD believed that effort was needed to increase the effectiveness of parental controls as well as educating parents and that more consideration should be given active enforcement of the Obscene Publications Act. ATVOD agreed to publish a summary of the emerging policy position on its website.

- h) **Independent Director recruitment** – Members noted that ATOVD was currently recruiting an Independent Director to replace Sara Nathan. It was noted that Kerry Kent was representing the Industry Forum on the recruitment panel and that applications would close on 29 October 2012.

### **3. Multiple Services Consultation**

Members noted that ATVOD had issued a consultation on multiple services on 11 October 2012 and that the closing date for responses was 7 December 2012. It was noted that the proposal was to allow a single overarching notification to cover all distribution outlets under the control of a single service provider. The proposal included an option to make separate notifications if preferred, clarification over information required with respect to distribution outlets and clarification over changes which would be regarded as 'significant' and therefore require prior notification. ATVOD had also included two examples of the impact on fee revenue for illustrative purposes only. It was noted that a decision on fees for 2013-14 would be dealt with in a separate consultation. ATVOD expected to publish a statement in early 2013, which would be followed closely by the fees consultation.

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

It was noted that the Access Services Working Party roundtable on technical barriers to re-using linear access services on VOD services had been held on 28 September 2012. The working party had agreed to progress work on subtitling through three linked work streams considering:

- Content: creating a standard format for suppliers;
- Translation: from one standard to another; and
- Delivery: to different devices / platforms.

It was noted that the working party considered that provision of access services on catch-up television was the most important element. This was also the strong view of disability groups. It was noted that Action on Hearing Loss had initiated a campaign for the requirement to provide access services on traditional linear TV to be extended to catch-up TV and video on demand. The Forum discussed industry concerns in this area and noted that it was unclear whether solutions could be found across different European platforms. Members suggested that the UK had a high provision of access services on VOD as well as linear.

### **5. Scope Working Party**

Members noted the minutes of the September working party meeting which had been circulated with the agenda and a verbal update on the working party. It was noted that the working group was focusing on reviewing the existing scope guidance and making recommendations for amendment. The working party felt that considerable work was required to revise the guidance, which would be likely to result in a public consultation in summer 2013 after the fees consultation. Any draft guidance would be brought to the Forum for comment prior to any public consultation being launched. It was noted that the Scope Working Party intended to include reference to Article 2 (6) of the AVMS Directive which excluded services aimed exclusively at

audiences outside the EU and which cannot be received from within the EU using standard consumer equipment, which had been omitted from the existing guidance. It was noted that ATVOD was keen to ensure that the working party represented the diversity of Forum membership and welcomed volunteers. Eric Mackay from Vevo volunteered to join the working party.

## **6. ATVOD Designation Review**

Members noted that Ofcom had published its review of the Ofcom designation of ATVOD on 15 August 2012 and an amended designation on 14 September 2012. ATVOD welcomed confirmation of its designation to 2020 and the amendments to the designation which gave ATVOD greater operating freedom in respect of:

- removal of the requirement for Ofcom to approve guidance on the Rules, on Scope, on European Works or on Access Services;
- removal of the requirement to consult Ofcom when formulating complaints handling processes; and
- removal of the requirement to consult Ofcom before issuing Enforcement Notifications.

In addition ATVOD welcomed Ofcom's publication of its appeals and sanctions procedures which provided clarity to service providers.

## **8. Ofcom Questions and Answers**

The Forum welcomed Michael Gooding and Sian Bundred to the meeting and noted that they had both recently joined the Ofcom VOD team. It was noted that Ofcom had commissioned qualitative research on consumer choices around VOD services, which would be published shortly. It was noted that Ofcom intended to start to publish its decisions on the five outstanding appeals over the next month, following publication of the research. The meeting noted that Ofcom's appeals and sanctions procedures stated its aim for publishing appeal determinations within 60 days of receipt. Ofcom made clear it was not at liberty to discuss individual appeals under current consideration but did note that Ofcom had taken longer to consider appeals to date as it was establishing precedent and had had to await the outcome of research, to establish if and to what extent it would have relevance to the appeals and the statutory criteria against which they are assessed. It was noted that Ofcom had no current plans to commission further research in relation to rule 11. Ofcom had commissioned research in 2010 into sexually explicit material which and Video on Demand in response to a Government report on sexually explicit material which had been published on the Government's website.

ATVOD advised Forum members of the difficulties of conducting research with children in relation to Rule 11 and therefore a clear policy position had to be reached without a clear research evidence base.

Members noted the process which Ofcom and ATVOD followed in relation to cross referral of complaints, but recognised that due to the differences in the rules which applied to linear and VOD content, the decisions reached could be different. ATVOD clarified that it would not normally consider a complaint made in respect of content included on a linear TV service, unless a separate complaint was made with respect to its inclusion in a VOD service. However, ATVOD was prepared to investigate a potential breach without a complaint being made in

certain circumstances, but would only use its limited resources for such purposes where it was proportional to do so.

#### **9. Frequency and nature of Forum meetings**

Members noted that at the last meeting it had been suggested that the Forum should meet three times a year. Members agreed that a frequency of three times a year was appropriate and agreed dates for 2013 Forum meetings on Tuesday 29 January and Tuesday 21 May. A third meeting would be planned in September and communicated to Members in due course.

Members considered the use of working parties to progress specific issues which were then brought back to the open Forum meetings had been successful. Members considered whether they wished to vary the format of meetings to include a standing committee of Forum members which could progress policy issues in more detail and engage regularly with the ATVOD Board between open Forum meetings. It was agreed that at the present time the current structure was working and therefore there was no additional requirement for a standing committee.

#### **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**

	<b>Name of Service Provider</b>	<b>Name</b>
1.	A+E Networks UK	Krishna Sood
2.	A+E Networks UK	Antoni Poyiadzis
3.	BBC Worldwide Ltd	Adrian Dicker
4.	Channel 4 Television	Mark Lambert
5.	Channel 4 Television	Peter Wildash
6.	Channel 5 Broadcasting Ltd	Martin Stott
7.	Community Channel	Alexander Kann
8.	Discovery Communications Europe Ltd	Kerry Kent
9.	FilmFlex Movies Ltd	Paula Holmes
10.	ITV Consumer Ltd	Simon Abrahams
11.	Portland Broadcasting Limited	Tom Dennis
12.	STV Central Ltd	Helen Alexander
13.	Turner Broadcasting System Europe Ltd ("Turner")	Aurea Garrido
14.	Turner Broadcasting System Europe Ltd ("Turner")	David Coughtrie
15.	UKTV Network(UK Channel Management Ltd)	Sam Terry
16.	UTV Television	Colin Pascoe
17.	VEVO (UK) Ltd	Eric Mackay
18.	VIASAT Broadcasting UK Ltd	Julia Smetana
19.	VIASAT Broadcasting UK Ltd	Gerry Macken
20.	Virgin Media Ltd	Ronee Isaacson
21.	Warner Bros. International Branded Services a division of WB TV Distribution Inc.	Daniel Coffey

	<b>Name of Associate Member/ATVOD representative</b>	<b>Name</b>
22.	AITA	Paul Matthews
23.	ATVOD	Ian McBride
24.	ATVOD	Nicola Ebdon
25.	ATVOD	Pete Johnson
26.	ATVOD	Ruth Evans
27.	ATVOD	Gidon Freeman
28.	ATVOD	Julie Hornle
29.	ATVOD	Chris Ratcliff
30.	ATVOD	Nigel Walmsley
31.	BSAC	Fiona Clarke-Hackston
32.	COBA	Adam Minns
33.	Ofcom	Michael Gooding
34.	Ofcom	Sian Bundred