



THE AUTHORITY FOR TELEVISION **ON DEMAND**

**Minutes of the
ATVOD Industry Forum
held on 18 October 2011 between 11am and 1pm
at New Broad Street House, 35 New Broad Street, London, EC2M 1NH**

Present and in attendance:

Please refer to attached list – annex 1

1. Minutes of Meeting held on 19 July and matters arising

The minutes were approved, subject to the consideration of the inclusion of an additional point made by Ofcom in relation to the recruitment of ATVOD Directors'. It was noted that minutes of Forum meetings had been published on the ATVOD website, as unapproved, once circulated to Members.

The following matters arising were noted:

- the Forum Terms of Reference had been published on the ATVOD website;
- the ATVOD Corporate Plan had been published on 15 September 2011, on which no comments had been received from Forum Members;
- ATVOD had circulated the update presentation given to the Forum on 19 July 2011 by email to all Members on 26 July 2011;
- ATVOD had provided clarification by email on 3 August 2011 of the definition of 'affiliation' to a larger company with regard to qualification for a commercial concessionary rate; and
- ATVOD's Industry Directors had been very happy to engage with Forum members on a more informal basis. Two Industry Directors had been available prior to the meeting to talk to Members. It was requested that ATVOD's Industry Directors be available for informal contact from Forum members between meetings. Daniel Austin, one of ATVOD's Industry Directors agreed to circulate his contact details to Forum members.

2. Update on actions taken since last meeting

Members noted that since the last meeting the Forum had made the following decisions via email:

- Guy Wheeler had been unanimously supported in his candidature for ATVOD's representative to the Committee of Advertising Practice (CAP). Guy provided Members with an update on his involvement with CAP to date and committed to making his email

- address available so Members could raise relevant issues with him. Guy stated that he would share a summary of his contact with CAP with Forum Members as appropriate.
- The Forum would take the lead in the proposed industry/ATVOD/Ofcom/DCMS Round Table meetings.
 - A variety of trade associations would be invited to become Associate members of the Forum. It was noted that the following trade associations had accepted the invitation: CAP, British Screen Advisory Council (BSAC), Community Media Association (CMA) and the Professional Publishers Association (PPA).
 - Not to constitute a Policy Committee at the present time, but to consider ad hoc working groups on specific issues as required.
 - A Year 3 fees working party would be constituted (see minute 5).
 - To support an approach to appointments of future industry and independent Board members as follows:

"For the appointment of the industry member there are 2 industry representatives (the Chair and Deputy Chair of the Industry Forum) on the Recruitment Panel and 1 independent ATVOD Board member, plus an independent assessor. Any decision would have to be unanimous. In relation to the appointment of the independent member, the situation would be reversed, with 1 industry representative and 2 independent ATVOD Board members, plus an independent assessor".

Members noted that the independent assessor was a person of independence and distinction with no connection to either the industry or to ATVOD. Their role was to scrutinise the process to ensure probity and be involved in the process in such proportionate manner as they decide.

One member reiterated their view that ATVOD did not need to follow the Commissioner for Public Appointments Code of Practice in the recruitment of Directors. The Chair acknowledged this viewpoint, however declined to discuss further as it had previously been established as a minority view amongst Members.

3. 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 a meeting. However the Forum Chair was trying to get a meeting planned before the end of the year and would confirm the data to Members once known. It was noted that the list of volunteers to sit on the Round Table was as follows:

- Platform - Ronee Isaacson (Virgin Media);
- PSB - Michael Wilson (UTV);
- non PSB - Gidon Freeman (NBC Universal);
- micro operators - Daniel Cass (ULTV) or Chris Gosling (SLTV);
- Adult industry - Jerry Barnett Strictly Broadband and Chairman AITA (Adult Industry Trade Association); and
- those for whom VoD is not the main core of their business – a representative from Ocean Finance, or Becky Foreman (Microsoft).

Members noted that no representative to represent the press had yet been found. It was noted that the Chair had contacted the Newspaper Association/Newspaper Society/PPA and AOP to encourage them to put forward one representative. These associations had agreed to do so once the outcome of the appeals in relation to various newspapers had been concluded. It was

also noted that no representative to represent non profit companies had yet been found. Jaqui Devereux from the Community Media Association agreed to volunteer to represent the non profit sector.

There was some discussion regarding opening the group of volunteers further to include a separate section for online media providers which were not a platform. There were mixed views, with the majority indicating that they would prefer to keep the list of volunteers to one per previously identified sector. Members were requested to contact the Chair with their views on this issue before she made a decision.

4. Proposed Revisions to Guidance on the Rules

Members noted that ATVOD has drafted proposed amendments to the Guidance on its Rules which were circulated with the agenda. It was noted that the amendments had been proposed for a variety of reasons. The guidance on Rule 11 (Harmful Material: Protection of Under-18s) had been pending the Government's review into whether the new Regulations provided sufficient protection for children and young people with regard to sexually explicit content. The Guidance on Rules 12 and 13 (relating to Sponsorship and Product Placement) had been pending the publication of Ofcom's new rules and guidance relating to commercial references in linear television services. The Guidance in respect of these Rules was no longer considered to be interim. The revised Guidance on Rules 12 and 13 in particular had been drafted to ensure that there was no conflict with Ofcom's guidance on related issues.

The Guidance on Rule 9 (Supply of Information) was revised to encourage service providers to provide more detail and clarity in the information they provide to users of their services in an aim to reduce confusion among complainants.

Members discussed the draft proposed amendments. It was noted that the Rules set out the statutory requirements with which providers of On Demand Programme Services scope must comply. The guidance is non-binding and is provided purely as an aid to interpretation of the statutory requirements. Members were invited to contact ATVOD's CEO by 1 November 2011 with any further questions or comments. It was noted that once ATVOD had taken into account the views of the Industry Forum, it would invite Ofcom to approve the new guidance prior to publication.

5. Year Three Fees working party

Members noted to outcome of the first working party meeting held on 14 September 2011. The Working Party had agreed that its aim was to identify a fee structure with longevity and around which an industry-wide consensus could be built. Such a fee structure would need to take account of any impact it might have on the development of the industry. It had also agreed to widen its membership, which now comprised:

- Janet Greco (Microsoft)
- Gidon Freeman (NBC Universal)
- Martin Stott (Channel 5)
- Chris Gosling (Serious Leisure)
- Mark Rowan (Everton FC)

- Steve Middleton (IP Vision)
- Derek Nelson (Classical TV)

Members noted a presentation (see annex 2) which identified the work undertaken at the a second meeting of the working party on 10 October 2011, where the party had agreed their work plan and considered a wide range of metrics. Members briefly discussed the metrics being taken forward for further consideration. It was noted that the working party did not have a favourite metric amongst those being taken forward. It was noted that once the party had decided which metrics to take forward for consideration ATVOD would need to collect data from all service providers to find out if the required data was held by service providers and was easily obtainable. It was noted that this would require co-operation from all service providers in order to get a new system in place for year three. Once the data had been collected the working group would construct some tariff options which would be considered by the Forum before being put forward for public consultation. It was noted that the working group would consider how to deal with multiple services in relation to each of the metrics being considered.

Members noted that the working party were not at this stage considering concessionary rates and that whatever metric was eventually chosen would not preclude concessionary rates from being used. One Member reiterated his concern with the concessionary rates being used in Year Two. ATVOD's CEO stated that all views expressed in the public consultation had been fully considered by ATVOD and that the decision reached after consultation had been widely accepted by the majority of service providers.

6. 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) the ATVOD Annual Report had been published on 30 September.
- b) ATVOD had worked with seven other regulators to develop Parent Port – the 'regulators website' which had been developed in response to the recommendation of the Bailey Report (Letting Children be Children). The website had already facilitated contact between consumers and ATVOD. Members noted that consideration was being given as to how to promote the website in a low cost way. One suggestion had been that all regulators ask their regulated companies to provide a link to the website on their complaints page and he invited Forum members to contact him if they were able to do so.
- c) Access Services – Members were requested to contact ATVOD if they had any comments or questions on the draft of the 'ATVOD best practice guidelines for access services on video on demand services – Interim Report' which had been circulated with the agenda. Members were asked to volunteer to become a member of the access services working group as proposed in the report. Members noted that the report on the survey conducted in July 2011 would be published shortly, which would identify the service providers who were asked to respond and those who responded. Members who had not yet responded were encouraged to do so by 1 November 2011. One Member noted that ATVOD had not followed the governments recommended timescales for

consultations in this respect. ATVOD's CEO agreed to consider whether longer timescales might be appropriate for certain consultations in the future.

d) European works – Members noted that ATVOD were discussing the reporting requirements for 2012 with Ofcom and aimed to ensure that the data requested was as targeted as possible. ATVOD was also considering the best timing for such an information request and sought the views of service providers on this point. Members indicated that a staggered approach in relation to the Ofcom request re linear services would be best. Members were asked to contact ATVOD's CEO if they had a view they wished to express on this issue.

d) Notifications and Complaints – Members noted that ATVOD had formally requested Ofcom to review their multiple services guidance. Members were requested to let ATVOD's CEO know of any alternative interpretations of substantially the same service which they believe would pass the legal test. Members noted that to date three complaints had proceeded to a full investigation, one of which was currently under investigation. It was noted that once Ofcom had reached an outcome on appeals ATVOD would revisit the Scope Guidance more generally to ensure it reflected the decisions made.

e) ATVOD Member Recruitment Update – Members noted that the recruitment procedure was underway. Members were encouraged to ensure that co-workers were made aware of the vacancies.

7. Ofcom Questions and Answers

Trevor Barnes (Head of Harm, Offence and Impartiality at Ofcom) introduced himself to the Forum and took a number of questions from the floor. The following points were noted:

- o Ofcom were continuing to work on the scope appeals and were hopeful of publishing some decisions in the near future. It was noted that preliminary views in each case would be sent to interested parties, who would then have an opportunity to make further representations before a final decision was made.
- o Ofcom were open to discussing their legal position in relation to multiple services with ATVOD and the Forum. Ofcom requested that the Industry formulate a view on what definition they would like. Members briefly discussed this issue and it was noted that there was not necessarily a commonality of view. However the Forum suggested that the definition of multiple services needed to be clearer and the process to assess multiple services needed to be simpler. It was agreed that the Forum Chair would develop a paper to identify the issues service providers have with the multiple services definition and process. Members were asked to contact ATVOD's CEO and the Forum Chair if they wished to contribute to this paper.

8. Any other business

It was noted that Forum meetings were costing ATVOD more than expected due to the shortage of meeting space able to hold 40 delegates in central London. Members were asked to contact the Company Secretary if they were able to provide meeting space of this size, in central London, which could be used for a future meeting for free or at very low cost. Ofcom agreed to find out if there was any meeting space available at Ofcom.

One Member asked whether the Forum should have been consulted on changes to ATVOD's Articles which were made following a designation obligation. It was noted that ATVOD's new articles were closely aligned to Model Articles. Members briefly considered this issue and were asked to let the Chair know if they wished to discuss the Articles further at the next meeting.

It was noted that a platform operator had asked to attend Forum Meetings. The Chair asked Members whether platform operator's should be invited to attend meetings or whether a representative body should attend to provide views from platform operators. There were mixed views dependent on how many additional Associate Members this invite would involve. The Forum requested that ATVOD undertake some research to define the different categories of service providers in the industry prior to making a decision.

9. Private Member session – General discussion of VoD regulation

It was agreed that there was no need for a meeting between the service providers present.

Annex 1 – List of Members and Attendees at the ATVOD Industry Forum on 18 October 2011

Name of Service Provider	Name
AETN UK	Cat Rogers
AETN UK	Antoni Poyiadzis
BBC Worldwide Ltd	Adrian Dicker
Canis Media Group (Ocean Finance & Mortgages Ltd)	Stuart Johnson
Canis Media Group (Ocean Finance & Mortgages Ltd)	Helena Brewer
CBS Chellozone UK Channels Partnership/ Zone Kids Ltd/ Zonemedia Broadcasting Ltd	Guy Wheeler
Channel 4	Mark Lambert
Channel 4	Peter Wildash
Channel 5 Broadcasting Ltd	Martin Stott
Columbia Pictures Corporation Ltd	Chris Roudette
Discovery Communications Europe Ltd	Kerry Neilson
FilmFlex Movies Ltd	Stephen Adegasoye
IP Vision UK TV	Steve Middleton
ITV Consumer Ltd	Alison McCann
Microsoft Ltd	Janet Greco
MTV Networks Europe	David Holmans
Music Choice Ltd	Chris Johnstone
Northern Visions	Daniel Cass
SCI FI Channel Europe LLC (NBC Universal)	Gidon Freeman
STV Central Ltd	Helen Alexander
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.

Marco Giusti

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

Ewan Watson

In attendance:

Name of Associate Member/ATVOD representative

Name

ATVOD Chair

Ruth Evans

ATVOD Independent Board Member

Ian McBride

ATVOD Company Secretary

Nicola Ebdon

ATVOD CEO

Pete Johnson

ATVOD Industry Board Member

Simon Hunt

ATVOD Industry Board Member

Daniel Austin

British Screen Advisory Council (BSAC)

Fiona Clarke-Hackston

Community Media Association

Jaqui Devereaux

Ofcom

Trevor Barnes