



THE ASSOCIATION FOR TELEVISION ON DEMAND LIMITED

Minutes of a meeting of the Board of the Association for Television On Demand Limited (“**ATVOD**”) held at the offices of Virgin Media, Tuesday 1st February 2011, 2.30pm

Present:

ATVOD Board:

Ruth Evans (RE) – Chair
Daniel Austin (DA)
Julia Hornle (JH)
Simon Hunt (SH)
Chris Loweth (CL)
Ian McBride (IM)
Simon Milner (SM)
Sara Nathan (SN)
Nigel Walmsley (NW) – Deputy Chair

In attendance:

Pete Johnson (PJ) – Chief Executive
Nicola Ebdon (NE) – incoming Company Secretary (mins)
Ronee Isaacson (RI) – outgoing Company Secretary

		ACTION
1.	Apologies There were no apologies.	
2.	Ratification of appointment of Board Member Members RATIFIED the appointment of Julia Hornle as a Board Member as from 24 September 2010.	
3.	Declarations of interest in relation to agenda items	
3.1	Members discussed whether non-independent Members would be conflicted in the discussion on the Year Two Fees consultation (item 12). Members DECIDED that there was no conflict given that the item would be discussing a proposed consultation on options, rather than a decision.	

4.	<p>Minutes from previous meeting</p> <p>Members APPROVED the draft minutes of the meeting held on 15th December 2010 subject to amendment to include:</p> <p>“Members NOTED that PJ, NW and JH had attended a meeting on 10 December 2010 with a group of service providers who had contributed to the additional funding and that NW, PJ, IM, JH and CL had attended a pre year two fees consultation stakeholder meeting on 13 December 2010 at Ofcom.”</p>	NE
5.	<p>Matters Arising</p> <p>There were no matters arising.</p>	
6.	<p>Action points</p> <p>Members NOTED that the majority of actions as attached to the minutes of the previous meeting had been completed.</p>	
7.	<p>Change of registered office</p> <p>Members APPROVED a resolution to change the registered office of ATVOD from 160 Great Portland Street, London W1W 5QA to Thames Court, 1 Victoria Street, Windsor, Berkshire, SL4 1YB. This change was to ensure that the registered office and the operating office were at the same location.</p>	RI
8.	<p>Market Developments</p>	
8.1	<p>Members NOTED the content of a presentation which outlined current market developments in relation to connected devices and the growth of video on demand players.</p>	
8.2	<p>Members REQUESTED that the presentation be circulated to the Board after the meeting and that in future presentations on market developments are circulated with Board papers.</p>	SH NE/SH
9.	<p>Chief Executive’s update</p> <p>Members NOTED a verbal update, which included the following:</p> <ul style="list-style-type: none"> • the Chief Executive had attended a meeting of the Ofcom Content Board on 25 January to provide an account of ATVOD’s activities. The Content Board appeared satisfied with ATVOD’s approach to scope and explanation of how it approached fulfilling its duties. The Content Board also discussed the relationship between ATVOD and Ofcom and issues which arouse at the time of designation; • following Ofcom’s recent reorganisation regular meetings will be set up between ATVOD and Ofcom colleagues responsible for co-regulation with ATVOD; 	PJ

- the Chief Executive met with disability advocacy groups to discuss ATVOD’s obligations and duties in regard to the AVMS Directive. Through discussion the organisations present appeared to understand the powers available to ATVOD in this area and recognised the difficulties for video on demand providers to supply services such as audio description;
- the Chief Executive met with TalkTalk and NBC Universal and was hopeful that they would become involved in the Industry Forum;
- the Chief Executive and Chair met with the Newspapers Publishers Association to discuss ATVOD’s approach to scope issues and had set out ATVOD’s view that a website can provide more than one service;
- a few remaining glitches had been resolved on the new ATVOD website;
- ATVOD’s name had been changed to the Authority for Television On Demand Limited and a new logo designed. The name, together with the new website and registered office address, would be launched in two to three weeks time;
- in the previous two weeks a full time Policy and Investigations Officer and part time Company Secretary had joined ATVOD. In addition the PA/Office Administrator had resigned; and
- the Chief Executive would be meeting shortly with DCMS and Ofcom to discuss the concerns of very small scale service providers.

PJ

PJ

10. Financial Report

Members **DISCUSSED** a number of issues in relation to the financial report which had been circulated prior to the meeting and the following points were **NOTED**:

- the way the accounts are presented would improve further;
- a decision to separate the accounting and auditing processes from 2012/13 had been made, until then these processes would be provided by the same provider; and
- the number of receivables over 60 days had reduced significantly during January.

11. Budget for 2011/12

11.1 Members **APPROVED** a proposal to bring ATVOD’s financial year (currently 1 January to 31 December) into line with the regulatory year (1 April – 31 March), which will be achieved by extending the current financial year so that it runs from 1 January 2010 to 31 March 2011.

NE

11.2 Following a discussion Members **APPROVED** the estimate of costs as proposed in the draft budget for 2011/12 circulated prior to the meeting. The following points arose from the discussion:

- a number of differences between Year Once and Year Two made

comparison of the budgets difficult and therefore figures to enable comparison had been calculated;

- due to resource constraints a number of areas of policy work had been postponed, but would need to be undertaken in year two;
- there are a number of risks and uncertainties relating to the proposed budget therefore a small general contingency had been included;
- there were plans to smooth out an anticipated spike in outgoings in 2011/12;
- remuneration of staff and Board Members would be frozen with one exception, the reasons for which were explored and accepted. Remuneration would be reviewed once market conditions permitted;
- there was no budget allocated for stakeholder engagement or research in the absence of a current cost justification; and
- there was a strong case to take out key man insurance and PHI insurance in relation to the Chief Executive, the reasons for which were explored and accepted.

11.3 Members **AGREED** to allocate time at a future Board meeting to discuss how ATVOD can undertake stakeholder engagement and research given current budget and what plans it should make for the future to assist in developing the budget for 2012/13 to incorporate such work. Consideration would be given to reaching agreements with other bodies to share relevant research with ATVOD.

NE

PJ

11.4 Members **REQUESTED** that the final budget be presented for approval at the next Board Meeting.

PJ

12. Fees - Year Two Fees Consultation

12.1 Members **DISCUSSED** a number of issues in relation to the draft Year Two consultation which had been circulated prior to the meeting. The following points arose from the discussion:

- consultation between ATVOD and Ofcom in relation to the number of options and in particular the concessionary options had been ongoing, but was not yet resolved. Discussions would continue over the next 10 days with the aim of simplifying and limiting the options;
- given the current timetable the consultation would close by the end of year one with a decision likely to be made early in year two; and
- all respondents would be asked to provide 'usage' data to ATVOD which would help in constructing future tariffs.

12.2 In relation to the options proposed in the consultation document, Members expressed the following views:

- the non concessionary rate options should be presented as two options, with option B consisting of three variants; and

	<ul style="list-style-type: none"> the positive rationale for proposing the options should be explained in as much detail as the rationale for not proposing alternative options. 	
12.3	<p>Members AGREED to revise with Ofcom the Year Two Fees consultation paper to reduce overall length by removing duplication and unnecessary explanation and include:</p> <ul style="list-style-type: none"> views expressed by Members on the options proposed; a concise executive summary to explain ATVOD's rationale for the interim position and long term aims; a form to collect information from providers; a chart to summarise the options against Ofcom charging principles and statutory principles; a comment box after each option proposed; and a graphical representation (e.g. pyramid diagram) to show relative provider payments. 	PJ
12.4	<p>Members were REQUESTED to send any drafting or other comments on the Year Two Fees consultation paper to PJ by 3 February 2011.</p>	ALL
12.5	<p>Members AGREED that PJ should express to Ofcom the Board's wish to change the proposed concessionary rate options, requesting that he escalate the message if necessary.</p>	PJ
12.6	<p>Members AGREED that the Chair and Deputy Chair should review and approve for publication the Year Two Fees consultation paper.</p>	RE/NW
13.	<p>Notifications and Scope Investigations</p>	
13.1	<p>Members NOTED the summary of notifications which had been circulated prior to the meeting, and a verbal update with regard to subsequent notifications, appeals and decisions made. It was NOTED that Ofcom had declined to consider an appeal against the breach previously recorded against Tesco. However, in light of the short period during which the service had been in operation, it was AGREED that enforcement action would not be appropriate.</p>	PJ
13.2	<p>Members AGREED that a response to Ofcom's consultation on procedures for handling appeals on scope and for imposing sanctions in relation to On-Demand Programme Services would be drafted and circulated to Members for comment prior to submission and publication.</p>	PJ
13.3	<p>Members REQUESTED that a list of notifications and appeals be circulated with papers for subsequent Board meetings.</p>	PJ/NE

14.	Complaints	
	Members NOTED the summary of complaints since 20 September 2010 as circulated prior to the meeting. It was NOTED that the Frankie Boyle Tramadol Nights on 4oD complaint determination would be sent to the complainant and service provider.	PJ
15.	Governance issues - Redrafting the Articles of Association	
15.1	<p>Members DISCUSSED a number of issues in relation to the draft Articles of Association as circulated prior to the meeting. The following points arose from the discussion:</p> <ul style="list-style-type: none"> • the requirement for a sunset clause for the industry forum had not been incorporated into the Articles, as it would be incorporated into documentation to create the Forum; • arrangements for recruitment panels had been set up as previously agreed and appointments would be approved by the full Board, subject to prior consultation with Ofcom; and • it was unclear whether the draft wording of 18(1)(g) and 24(4)(f) with regard to the ability of independent Director/Members voting as a group to terminate a non-independent Director/Member's appointment would be contrary to the Director/Member contract letters. 	
15.2	Members AGREED that SM and SH would request their respective companies to provide a company lawyer to review the draft articles to ensure all relevant statutory areas had been incorporated, including checking the provisions for removal of directors.	SM/SH
15.3	Members AGREED that Member contract letters would be checked with regard to Director removal rights.	NE
15.4	Members AGREED that consideration would be given to identifying a company to provide independent legal advice for the future.	NW/PJ
16.	Industry and Consumer Forums	
	Members NOTED the update on the meeting to be held on 4 February 2011 to establish an industry forum, as circulated prior to the meeting. Members AGREED to ask those at the meeting whether they wanted Forum meetings to be open to other interested parties.	RE
17.	Public Relations Sub-Committee	
	Members AGREED that three Members would act as a Board sub-group to develop public relations strategy and develop lines of response.	IM/NW/S H

18.	Items for information only	
	Members NOTED the content of the press cuttings as circulated prior to the meeting.	
19.	Any other business	
19.1	Members NOTED that Chris Loweth was no longer employed by Channel 5 Broadcasting and would be taking a position with the body organising the opening and closing ceremonies for the 2012 Olympics as from 28 February 2011. The Board AGREED that Chris would remain as a non-independent Board Member until a replacement had been recruited, no later than 31 December 2011. Members NOTED that arrangements for the recruitment of Board Members would be set up in its replacement Articles and involve representative of the Industry Forum (once established). As such the recruitment of a replacement non-independent Board Member would take some time and that it was important to maintain a full and experienced Board in the meantime.	NE
19.2	Members NOTED that the roundtable led by DCMS to discuss children and content online, would be held on 7 February 2011. Despite a previous intention to invite ATVOD, no invite had been received.	PJ
19.3	Members NOTED that DCMS had announced its intention to review the Communications Act by 2015. An announcement of the review timetable was expected in four to eight weeks. Members AGREED to schedule time at a future Board meeting to discuss its views on this issue once the review timetable has been published.	NE
19.4	Members gave their gratitude to Ronee Isaacson for her assistance as ATVOD's Company Secretary over the last few years.	
	The meeting closed at 5.35pm.	