



THE AUTHORITY FOR TELEVISION **ON DEMAND**

Minutes of a meeting of the Board of the Authority for Television On Demand Limited (“**ATVOD**”) held at the offices of the BBFC, Tuesday 19th July 2011, 3.00pm

Present:

ATVOD Board:

Ruth Evans – Chair

Julia Hornle

Chris Loweth

Ian McBride

Simon Hunt

Simon Milner

Nigel Walmsley – Deputy Chair

In attendance:

Pete Johnson – Chief Executive

Nicola Ebdon – Company Secretary (mins)

1. Apologies

1.1 Apologies were received from Daniel Austin and Sara Nathan.

2. Declaration of members’ interests

2.1 There were no additional interests declared.

3. Minutes of the 22 June 2011 meeting, matters arising and updated actions

3.1 The Board **APPROVED** the draft minutes of the meeting held on 22 June 2011 subject to amendment as agreed at the meeting.

3.2 The Directors **NOTED** that the majority of actions had been completed.

3.3 In relation to minute 5.4 it was **NOTED** ATVOD were waiting for Ofcom to respond with regard to the planned report on European Works.

3.4 The Directors **RECEIVED** an update in relation to minute 5.7 and **NOTED** that DCMS had not yet responded to the Ofcom Report on R18 in writing.

3.5 In relation to minute 10.1 from the May Board, Directors **NOTED** that a final draft of ATVOD's Openness and Transparency statement had been emailed to Directors. The Board **APPROVED** it for publication.

4. **Market Developments**

4.1 Directors **NOTED** the content of a presentation on the UK VOD advertising market. Of particular note was the likelihood of consumers raising the potential for confusion between advertising and editorial as an issue in the near future, given the likely increase in VOD advertising. It was **NOTED** that the ASA were keen to be involved in discussions with ATVOD and the Industry Forum on this issue. Directors **CONSIDERED** a number of related issues, including the role of the ASA in this area and **AGREED** to raise how to deal with this issue with the ASA.

5. **Chief Executive's update**

5.1 The Board **NOTED** the update on new and withdrawn notifications as provided in the paper and as updated verbally at the meeting. The Directors **DISCUSSED** some related issues.

5.2 The Board **NOTED** progress made with scope investigations as provided in the paper and **DISCUSSED** a few issues related to enforcement action. Directors **AGREED** that in 2011/12 investigations would concentrate on providers: which were the subject of a complaint, which were a competitor of a notified ODPS, or which were providing an 'adult' service.

5.3 Directors **NOTED** that the Scope Committee met on 23 June 2011 and made the following decisions:

Final Determinations:

- FT Video (<http://video.ft.com/>) is an ODPS
- Guardian Video (<http://www.guardian.co.uk/video>) is an ODPS
- Guardian YouTube (<http://www.youtube.com/TheGuardian>) is an ODPS
- Yahoo! Video News (<http://uk.news.yahoo.com/video-audio/>) is an ODPS
- Coffee Shorts (<http://www.coffeeshorts.co.uk/>) is an ODPS
- OK! TV (<http://muzu.ok.co.uk>) is an ODPS

Preliminary Views:

- E! Entertainment Video (www.eonline.com/videos) is an ODPS
- Digital Theatre (<http://www.digitaltheatre.com/>) is an ODPS
- Fox holds editorial responsibility for its National Geographic content on Sky Player
- BSkyB holds editorial responsibility for the FX and National Geographic content on Sky Anytime
- BSkyB holds editorial responsibility for the Viacom (MTV, Nickelodeon, Comedy Central) content on Sky Anytime

that the following notifications could be withdrawn for Year Two:

- ABS-CBN The Filipino Channel
- Teachers Media (<http://www.teachersmedia.co.uk/>)

- 5.4 Directors **NOTED** that the Scope Committee also met on 19 July 2011 and made the following decisions:
Final Determinations:
- Independent Video (<http://www.independent.co.uk/video/>) is an ODPS.
 - Horse and Hound TV (<http://www.horseandhound.co.uk/best/396/307671.html>) is not an ODPS.
- In addition the Committee agreed to the request of Yahoo! that investigation of its UK Video News service be put on hold awaiting outcome of newspaper appeals to Ofcom, and confirmed that music videos should be counted as individual programmes for the purposes of comparing different versions of a service/services.
- 5.5 The Board **NOTED** the update on appeals as provided in the paper, **DISCUSSED** a number of issues and **AGREED** what action to take with regard to Ofcom timescales for dealing with appeals and enforcement action.
- 5.6 The Board **NOTED** the update on complaints as provided in the paper and **DISCUSSED** the nature of some of the complaints in more detail. Directors **NOTED** that complaints made about un-notified providers result in a scope investigation being undertaken prior to a complaint being investigated. It was **AGREED** that the complaints process would be reviewed to ensure that this scenario was appropriately captured. It was **AGREED** that in such situations the complainant would be kept informed of progress and offered assistance where relevant. It was **NOTED** that the Executive did not establish if a complaint was in scope prior to referring it to a provider, however it was **AGREED** that this analysis would be undertaken retrospectively. Directors **NOTED** that all complaints received had been dealt within KPI's.
- 5.7 The Board **NOTED** the update on Access Services as provided in the paper and **CONSIDERED** how to encourage industry in this area. It was **AGREED** the Industry Forum would be consulted on how best to promote the provision of access services within the industry.
- 5.8 The Board **NOTED** the update on European works as provided in the paper.
- 5.9 The Board **NOTED** the update on the outcome of the Industry Forum meeting held earlier in the day. Directors **DISCUSSED** a number of issues which arose at the meeting and **AGREED** action to be taken. It was **NOTED** that Forum Members felt that there should be a closer relationship between ATVOD's non-Independent Directors and the Forum than at present and **CONSIDERED** how to ensure this was addressed.
- 5.10 The Board **NOTED** the update on staffing issues as provided in the paper.
- 5.11 The Board **NOTED** the update on public relations as provided in the paper and **DISCUSSED** the outcome of some of the meetings further. Directors **CONSIDERED** and

AGREED a number of suggested actions proposed by the Chair and Deputy Chair to develop ATVOD's communication with stakeholders.

6. Financial report

6.1 The Board **NOTED** the content of the financial report. It was **AGREED** that the relationship with both accountants and auditors would be kept under review.

6.2 It was **AGREED** that as well as a set of audited accounts submitted to companies house an expanded financial report for the year to 31 March 2011 would be prepared for dissemination to stakeholders as an annual report. It was **AGREED** that this report would include a narrative and Chairman's preface.

6.3 Directors **NOTED** that comparison figures with the previous year have to be shown in the Annual Accounts to 31 March 2011 and **DISCUSSED** whether to prepare those accounts according to GAAP or IFRS procedures or postpone a change to IFRS to next year, in light of the additional complexity involved. Directors **DELEGATED AUTHORITY** to the Chief Executive and Deputy Chair to make a decision on when to change to IFRS.

6.4 Directors **NOTED** that the Finance Committee had met on 5 July and had decided that:

- the accounts would identify Directors as either 'Independent' or 'Non-Independent', would identify the Chair and Deputy Chair, and would list the Chair first;
- the annual accounts would include accrued income in relation to services which had not yet notified (or been invoiced) for the year to 31 March 2011 but which were almost certain to do so;
- as the accounting period was 15 months, a pro-forma set of accounts for the 12 month period to 31 March 2011 would also be prepared;
- cashflow forecasts would continue to be prepared weekly;
- management accounts would continue to be prepared bi-monthly and would include an expanded narrative to enable key information to be identified more easily;
- payments would continue to require to be authorised and approved by two people in accordance with the procedure set down last year; and
- Ofcom would continue to provide the invoicing service for the current year, however alternative options may be considered for future years.

6.5 Directors **NOTED** that the Finance Committee had also met with the Auditors and considered:

- the position of ATVOD with regard to VAT registration. Subsequent advice from the Auditor's VAT Manager confirmed that ATVOD is neither required nor eligible to register for VAT purposes;
- the treatment of accrued income in the period after the start of the financial year but before invoices for fees have been issued;
- the need to include in the annual accounts comparison figures for the previous year given the difference in functions carried out by ATVOD in the two

periods; and

- the need for Directors to sign a letter of representation. The Auditor confirmed that this would be required after the completion of the Auditor's Report.

7. Member Recruitment

7.1 The Board carefully **CONSIDERED** and **APPROVED** the draft Member Recruitment Policy and Process, subject to amendment as agreed at the meeting. Directors **NOTED** that there had been some discussion at the Industry Forum meeting as to whether a different process should be proposed by the Industry Forum. Directors **AGREED** that as the Policy and Process as approved was based on the Commissioner for Public Appointments Code of Practice, underpinned by the Nolan Principles, it was the best process to ensure that it was fair, open and transparent and that the correct appointments are made. The Board **AGREED** to accommodate suggestions made by the Industry Forum to change the process, provided that any changes resulted in a recruitment process which was fair, open and transparent as stipulated by the Nolan Principles. Directors **CONSIDERED** a number of such variations to the policy and **AGREED** to decide whether to amend the policy once the Industry Forum had formed a view.

7.2 The Board carefully **CONSIDERED** and **APPROVED** the draft Role Description and Person Specification for the forthcoming non-Independent Member recruitment which encouraged applicants who could reflect the perspectives of small and medium size providers, subject to amendment as agreed at the meeting. Directors **AGREED** to publicise the vacancy on its website and amongst Industry Forum Members. Directors **AGREED** not to use a recruitment consultant or executive search firm on this occasion.

7.3 Directors **NOTED** the draft timetable and **REQUESTED** the Executive set up interview dates.

8. Director Interests

8.1 The Board **CONSIDERED** and **AGREED** the recommendations made in the paper to ensure that it was compliant with the Companies Act 2006 when addressing Director's interests.

8.2 Directors **AGREED** that a review of the Code of Conduct against the Companies Act requirements would be undertaken and brought to the Board for approval.

8.3 Directors **NOTED** that they would be asked to sign an annual declaration of interests in October 2011.

9. Director Action Plans

9.1 The Board **NOTED** and **AGREED** the Director Action Plans as presented in the paper, subject to some amendment to reflect decisions made later in the meeting on governance responsibilities.

10. Risk Management Plan and Risk Register

10.1 The Board **CONSIDERED** and **AGREED** the Risk Management Plan as presented.

10.2 The Board **CONSIDERED** and **AGREED** the structure and content of the Risk Register subject to amendment as agreed at the meeting. Directors **AGREED** to monitor and control risks on a quarterly basis at Board meetings, with the first review as part of the November Strategy Day.

11. ATVOD's Governance Structure

11.1 The Board **CONSIDERED** the recommendations made in the paper and **AGREED** the following:

- Julia Hornle will Chair the Scope Committee;
- Ian McBride will Chair the Complaints Committee;
- there will be a Media and Public Relations sub-group which meets to consider media and public relations issues as required;
- its Committees will have Terms of Reference drafted for consideration at a future Board meeting;
- as a Board it will take responsibility for risk, with routine reviews on a quarterly basis;
- as a Board it will take decisions on remuneration; and
- all decisions of Committees will be formally minuted in Board minutes when reported at Board meetings.

11.2 It was **AGREED** that where there are current issues to be discussed sub-groups would meet after the summer to progress work and identify any other work to be planned.

12. Any other business

12.1 There were no items of other business.