



**Minutes** of a meeting of the Board of the Authority for Television On Demand Limited (“ATVOD”) held at the offices of the BBFC, Tuesday 17 July 2012, 2.30pm

**Present:**

ATVOD Board:

Ruth Evans – Chair (items 1-11.2)  
Daniel Austin  
Gidon Freeman  
Julia Hornle  
Sophie Jones  
Ian McBride  
Sara Nathan  
Chris Ratcliff  
Nigel Walmsley (Chair items 11.2-12)

In attendance:

Pete Johnson – Chief Executive  
Nicola Ebdon – Company Secretary (mins)

1. **Apologies**
- 1.1 There were no apologies for absence.
2. **Declaration of members’ interests**
- 2.1 There were no additional interests declared for inclusion in the published register of interests.
3. **Minutes of the 23 May 2012 meeting, matters arising and updated actions**
- 3.1 The Board **APPROVED** the draft minutes of the meeting held on 23 May 2012, subject to a small change to minute 6.11.
- 3.2 The Directors **NOTED** that the majority of actions had been completed. In relation to an action arising from the March Board meeting Directors **NOTED** that once confirmation of common understanding with Ofcom in relation to the ‘comparability test’ had been

obtained a paper would be brought to the Board for decision.

**4. Board Re-appointments**

**4.1** The Board **CONSIDERED** and **AGREED** a recommendation made by the Chair to re-appoint Nigel Walmsley and Daniel Austin for a second term of three years, until September 2015, unless terminated early in accordance with ATVOD's Articles of Association. The Board expressed their gratitude to the two Directors for agreeing to be re-appointed.

**4.2** The Board **NOTED** that Sara Nathan had decided to resign as a Director as from December 2012. The Board expressed its gratitude to Sara for the work she had completed to establish ATVOD and links with stakeholders. Directors **CONSIDERED** the intention they had previously made to consider reducing the Board by two Directors in 2013 in order to assure industry of value for money. It was **NOTED** that feedback from industry was that the current Board structure and size was appropriate and so Directors **AGREED** to convene an appointments panel, which would include Ian McBride to appoint a new Director to replace Sara Nathan. It was **AGREED** that the role description would include experience of content regulation, R18 issues and consumer protection. Directors **REQUESTED** the appointments panel consider using a search agency once expected costs had been established. It was **AGREED** that the advertisement would be approved by Directors via email with the vacancy advertised shortly after and a new Director in post by January 2013.

**4.3** It was **AGREED** that the Board would re-consider its size and composition in 2013.

**5. Chief Executive's update**

**5.1** The Board **NOTED** the update on new and withdrawn notifications as provided in the paper.

**5.2** The Board **NOTED** progress made with scope investigations as provided in the paper. It was **NOTED** that the update included additional information on the breakdown of categories of investigations and that higher priority investigations were being progressed in a timely manner. In relation to the low priority cases Directors **CONSIDERED** how best to use resources to move the investigations forward and in particular identify any cases which did not require investigation and could be removed from the list. It was **AGREED** that the CEO would consider the use of temporary resource to progress this work and discuss further with Julia Hornle. Directors **NOTED** that legal advice had been sought regarding ATVODs ability to demand information from proxy registration services behind which some services had attempted to hide their identity. Directors **NOTED** that the advice would be used as a basis for establishing whether ATVOD needed to make a change in the wording of a demand for information.

- 5.3 The Board **NOTED** that the Scope Committee met on 25 May 2012 and made the following decisions:
- a preliminary view that 3VTV <http://3vtv.co.uk/> was an ODPS;
  - that Country Channel YouTube (<http://www.youtube.com/user/countrychanneltv>) was not an ODPS;
  - that MSN Video Player (<http://video.uk.msn.com/>) [[withdrawal of existing notification](#)] was not an ODPS; and
  - a final determination that On Demand group held editorial responsibility for the 'TV On Demand' service on the H3G platform.
- 5.4 The Board **NOTED** the update on appeals as provided in the paper.
- 5.5 The Board **NOTED** the update on complaints as provided in the paper. Directors **NOTED** an update in relation to 13 services provided by nine service providers who were issued with Final Determinations on 2 July 2012 in relation to their non-compliance with Rule 11. It was **NOTED** that the Final Determinations had taken into account where a provider had brought their service into compliance and that in such circumstances no further action was deemed necessary by ATVOD at the present time. Following due process ATVOD expected to issue an Enforcement Notification in respect of each service which remained non-compliant on or soon after 17 July 2012. Further non-compliance after two weeks would result in referral to Ofcom for consideration of a financial sanction or suspension or restriction of the service.
- 5.6 The Board **NOTED** the update on Access Services as provided in the paper. Directors **NOTED** that the Access Services Guidelines had been submitted to Ofcom following comments from the Industry Forum and Working party had been taken into account. It was **NOTED** the Access Services Working Party roundtable on technical barriers to re-using linear access services on VOD services was expected to take place in September.
- 5.7 The Board **NOTED** the update on Designation Review as provided in the paper and that responses to the review had been broadly positive. Directors would be updated once Ofcom had communicated their conclusions.
- 5.8 The Board **NOTED** the update on the Fees Working Party as provided in the paper.
- 5.9 The Board **NOTED** the update on the Multiple services/'Substantially the same' Working Party as provided in the paper. Directors **NOTED** the legal advice obtained on the central idea of the working party, that a service should be considered to comprise all the VOD content provided by a service provider across all distribution outlets. It was **NOTED** that a consultation document would be drafted for consideration by the Board in the autumn.
- 5.10 The Board **NOTED** the update on the Industry Forum as provided in the paper and an oral update from the meeting held earlier in the day.
- 5.11 The Board **NOTED** the update on meetings with Ofcom on scope issues as provided in the paper.

5.12 The Board **NOTED** the update on ParentPort as provided in the paper and **CONSIDERED** an amendment to the draft ParentPort MoU to include a commitment to conduct an annual review following a request by ATVOD. The Board **AGREED** to sign the MoU provided the amendment was incorporated.

5.13 The Board **NOTED** the update on public relations as provided in the paper and **DISCUSSED** some of the meetings further.

## 6. Financial report

6.1 Directors **CONSIDERED** the Management Accounts for April and May 2012 and **NOTED** a number of arising issues.

6.2 Directors **NOTED** an update on the Audit and Finance Committee meeting held on 19 June 2012 which was attended by ATVOD's auditors, Mercer and Hole, and considered the audit of the Financial Statements for 2011/12. Directors **AGREED** that establishing a prudent level of reserves should be addressed as part of the next fees consultation.

## 7. Annual Report

7.1 Directors **CONSIDERED** the statutory Financial Statements as presented as an annex to the Annual Report on which an Audit had been completed under IFRS procedures. It was **NOTED** that, before publication, the auditor will be asked to confirm, in the light of the knowledge obtained during the audit, that the body of the report which presents the figures in more detail and with an accompanying narrative has no material inconsistencies from the audited financial statements, and that the presentation of the audited financial statements in the appendix raises no issues of concern.

7.2 Following consideration of the annual report Directors **AGREED**:

- that the financial statements had been presented in accordance with applicable law, International Financial Reporting Standards and regulations, and gave a true and fair view of the state of affairs of the company and of the surplus or deficit of the company for that period.
- that the annual financial statements of the company for the period 1 April 2011 to 31 March 2012 prepared by Mercer & Hole were approved and authorised for issue, as evidenced by signature of the balance sheet by Nigel Walmsley.
- that the director's report for the period 1 April 2011 to 31 March 2012 was approved, as evidenced by signature of the report by Nicola Ebdon; and
- to publish the Annual Report subject to any revisions made in order to accommodate the outcome of the Designation Review, as approved by Ruth Evans and Nigel Walmsley.

7.3 It was **NOTED** that ATVOD would issue a press release to accompany the report and a letter would be drafted for key stakeholders.

**8. European Works Plan**

**8.1** Directors **CONSIDERED** draft European Works Plan and **NOTED** that the Industry Forum meeting earlier in the day had indicated that they were content with the plan, subject to a minor revision to give more notice to service providers of the need to provide specified data, and felt that it was a proportionate approach. Directors **NOTED** that in drafting the Plan ATVOD had taken into account feedback from industry stakeholders on the burden placed on them by the demand for information issued in 2011 and the reporting template subsequently developed by the Commission and provided to ATVOD in late 2011. Directors **APPROVED** the plan in principle subject to any written comments Industry Forum Members received by 3 August 2012 and **DELEGATED APPROVAL** to Daniel Austin and Ruth Evans.

**8.2** Directors **NOTED** that whether ATVOD needed to seek approval from Ofcom before publishing the plan would depend on the outcome of the Designation Review which was expected by 3 August 2012.

**9. ATVOD Committee Terms of Reference**

**9.1** Directors **CONSIDERED** draft Terms of Reference to reflect work delegated by the Board to its Scope, Complaints and Audit and Finance Committees. It was **AGREED** that the Terms of Reference should follow the same format to ensure that they address the same issues of Membership, Quorum, Frequency, Notice, Records, Responsibilities and Authority. The Board **AGREED** the Terms of Reference for Scope and Complaints Committees subject to some minor amendments.

**9.2** It was **NOTED** that the role of the Audit and Finance Committee did not follow a standard Audit Committee in that it also reflected the work usually performed by a Finance team in a larger organisation. It was **AGREED** that the Chair of the Committee would suggest changes to reflect this distinction, resulting in a requirement for the Committee to meet formally as the Audit Committee at least once a year and other times as a Finance Committee. Final approval of the Audit and Finance Committee Terms of Reference was **DELEGATED** to the Chair. Directors **AGREED** that Gidon Freeman would sit on the Audit and Finance Committee, when it met formally as an Audit Committee.

**10. DCMS White Paper**

**10.1** Directors **WELCOMED** Ruth Wye from DCMS to the meeting to discuss the DCMS Communications Review. Key areas of discussion included:

- DCMS plans to develop a white paper following a series of consultation seminars to test thinking in an informal way
- Government's views in relation to future regulation of video on demand and the press as had been laid out in Jeremy Hunt's oral and written evidence to the Leveson enquiry;
- The difficulty of defining 'the press' and the need for a statutory element to any regulation flowing from the AVMS Directive.
- DCMS plans for an impact assessment on the clarification of the protections

afforded to minors in relation to hardcore pornographic content on VOD services as part of the White paper process. DCMS agreed to continue to engage with ATVOD on the issue to ensure co-ordinated thinking on such issues.

**11. ATVOD Strategy**

**11.1** The Board **CONSIDERED** an overview of recent market developments which included the launch of Youview, NowTV and UK HbbTV trial. It was **AGREED** that the Board would receive a demonstration of Youview in the Autumn.

**11.2** The Board **CONSIDERED** an overview of recent regulatory developments which included the DCMS White paper on content regulation, Leveson enquiry into press regulation, Hargreaves review of copyright issues and protection of children online.

**11.3** Directors **NOTED** that the Board R18 sub-group met in June and developed proposals for a public policy position for ATVOD to adopt on R18 level content accessed via services which sit outside UK jurisdiction. Directors **CONSIDERED** and **AGREED** a proposal that ATVOD should develop a position which draws upon ATVODs experience in regulating such content in order to be able to make an informed contribution to the next stages of debate on R18 issues and provide evidence. It was **NOTED** that the proposal would be developed and considered in detail at a future Board meeting. It was **AGREED** the position would include:

- strong action in regard to services within our remit;
- support for media education initiatives;
- support for ‘active choice’;and
- support for more active enforcement of the Obscene Publications Act.

Directors **AGREED** to send comments on the position to the CEO to help inform the position paper.

**11.4** Directors **REVIEWED** information regarding the effectiveness of parental controls and **AGREED** that the Executive should develop a response to the Consultation on active choice filtering, which reflected ATVOD’s position of support for parental controls being used but questioned their adequacy and suggested that consumers are informed of the limitations of these controls. The response should reflect that ATVOD’s position was under development.

**11.5** It was **NOTED** that ATVOD were commissioning research to attempt to establish the degree of public awareness of the availability of R18 content online and the extent to which the UK public regard protection of minors from such content important. It was **SUGGESTED** that the publication of the research conclusions would be an opportune time to explain ATVOD’s position.

**11.6** Directors **CONSIDERED** a draft communications plan. It was **AGREED** that the plan would be updated to include engagement with other stakeholders, press and speaking opportunities, as well as the Westminster timetable for relevant events. Directors **AGREED** to identify existing relationships they held with stakeholders. . It was also

**AGREED** that consideration would be given to ways in which the monthly Newsletter might be further developed.

**12. Any other business**

**12.1** There were no items of other business.