



Minutes of a meeting of the Board of the Authority for Television On Demand Limited (“**ATVOD**”) held at the offices of the BBFC, Tuesday 25 September 2012, 2.30pm

Present:

ATVOD Board:

Ruth Evans – Chair
Daniel Austin
Gidon Freeman (items 1-6)
Julia Hornle
Sophie Jones
Ian McBride
Chris Ratcliff
Nigel Walmsley

In attendance:

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

1. **Apologies**
 - 1.1 Apologies for absence were received from Sara Nathan.
2. **Declaration of members’ interests**
 - 2.1 There were no additional interests declared for inclusion in the published register of interests. It was **NOTED** that an item to be discussed as part of the Chief Executive’s update related to Sky and therefore Daniel Austin would leave the room throughout the discussion.
3. **Minutes of the 17 July 2012 meeting, matters arising and updated actions**
 - 3.1 The Board **APPROVED** the draft minutes of the meeting held on 17 June 2012, subject to changes to minutes 5.2, 11.1 and 11.3.
 - 3.2 The Directors **NOTED** that the majority of actions had been completed.

4. **Chief Executive's update**

4.1 The Board **NOTED** the update on new and withdrawn notifications as provided in the paper. Directors **CONSIDERED** whether to obtain legal advice on the development of a letter to request information to help identify service providers and **AGREED** that this was not necessary at the current time.

4.2 The Board **NOTED** progress made with scope investigations as provided in the paper. It was **NOTED** that the Scope Committee met on 11 September 2012 and made the following decisions:

- Henley Standard TV was not currently an ODPS
- Birmingham Mail was not currently an ODPS
- View TV was not currently an ODPS
- Channel Flip was not currently an ODPS
- preliminary view that Rampant TV was an ODPS
- preliminary view that Felixtowe TV was an ODPS
- final determination that Joybear Pictures was/remained an ODPS
- final determination that Playboy TV / Demand Adult were/remained ODPSs
- final determination that Strictly Broadband was/remained an ODPS

The committee decided to reserve judgement on the following services:

- BNPTv – pending further research on comparable broadcast television services
- British Gymnastics TV – pending outcome of Ofcom appeals on YouTube channels

4.3 Directors **NOTED** that the committee had made a revised final determination (following an appeal to Ofcom) that the Viacom channels hold editorial responsibility for their services on the Sky Anytime platform.

4.4 The Board **NOTED** the update on appeals as provided in the paper.

4.5 The Board **NOTED** the update on complaints as provided in the paper.

4.6 Directors **NOTED** an update in relation to enforcement action against services to which ATVOD had issued a determination of a breach of Rule 11. It was **NOTED** that Ofcom were considering the imposition of sanctions against four services which provided access to material which might seriously impair the physical, mental or moral development of persons under the age of 18 in a manner which failed to secure that it would not normally be seen or heard by persons under the age of 18, and which had not made the changes required in Enforcement Notifications issued by ATVOD before the given deadline.

4.7 The Board **NOTED** the update on Access Services as provided in the paper. Directors **NOTED** that the Access Services Working Party roundtable on technical barriers to re-using linear access services on VOD services would take place on 28 September 2012. It was **NOTED** that ATVOD had received a marginally higher level of responses to the annual questionnaire inviting service providers to give details of the access services they provide.

- 4.8 The Board **NOTED** the update on European works as provided in the paper.
- 4.9 The Board **NOTED** the update on the Scope Working Party as provided in the paper. It was **NOTED** that ATVOD were seeking to expand the Working Party membership to ensure appropriate industry representation. Directors **NOTED** that should the working party recommend changes to the guidance, which are then taken forward by ATVOD a public consultation would be conducted before reaching a final decision in summer 2013.
- 4.10 The Board **NOTED** the update on the Communications Review as provided in the paper. It was **NOTED** that ATVOD were cooperating with DCMS on the preparation of an impact assessment considering proposals in relation to hardcore porn on VOD services.
- 4.11 The Board **NOTED** the update on the submission ATVOD had made on 18 September 2012 to the parental controls consultation.
- 4.12 Directors **NOTED** the update in relation to the submission ATVOD had made on 24 September 2012 to the Lords Communications Committee Call for Evidence: Media convergence and public policy.
- 4.13 Directors **NOTED** the update in relation to the ATVOD Annual report which had been published on 17 August 2012.
- 4.14 The Board **NOTED** the update on ParentPort as provided in the paper.
- 4.15 Directors **NOTED** the update in relation to recruitment. It was **NOTED** that Saxton Bampfylde had been appointed to assist in the Independent Director recruitment process and would also provide the person of independence and distinction required to serve on the Panel. The Panel therefore comprised:
- Ruth Evans
 - Ian McBride
 - Kerry Kent (Forum Chair)
 - Deborah Loudon (SaxBam – independent person)
- Directors **NOTED** the recruitment timetable and **APPROVED** the advert for publication.
- 4.16 The Board **NOTED** the update on public relations as provided in the paper and **DISCUSSED** some of the meetings further.
5. **Financial report**
- 5.1 Directors **CONSIDERED** the Management Accounts for June and July 2012 and **NOTED** a number of arising issues.
- 5.2 Directors **CONSIDERED** two issues in relation to enforcement of outstanding debts and **AGREED** action to be taken in each case.

5.3 Directors **NOTED** that due to ATVOD's size it would be subject to the new employees pensions legislation provisions from 2014-15. It was **NOTED** that the Chair and Deputy Chair would be considering the CEO's terms and conditions and the salaries of Independent Directors prior to setting the 2013/14 budget. It was **NOTED** that there had been no increase in Director salaries for three years.

6. Designation Review Statement

6.1 Directors **CONSIDERED** comments and suggestions made by Ofcom in its Designation Review Statement and Amended Designation Statement which related to ATVOD's designated duties, and action which had previously been taken or planned by ATVOD. It was **NOTED** that the majority of Ofcom's suggestions were actions which ATVOD had already undertaken or had planned to undertake.

6.2 Directors **CONSIDERED** the suggestion that ATVOD consider enabling ODPS providers to notify services online. It was **AGREED** that the Executive would identify the relative costs and benefits of such a facility and include these in the consultation on 2013/14 fees.

6.3 Directors **CONSIDERED** the suggestion that ATVOD consider taking forward the idea of a road map to provide guidance relating to the Access Services Duty. Directors **NOTED** that the Executive intended to discuss this with the Access Services Working Party, with a view to assessing the viability of providing guidance on reasonable expectations with respect to level of provision within a particular timeframe. However it was **NOTED** that it was not a straightforward issue as ATVOD did not have an accepted measure of scale such as that available to Ofcom and ATVOD did not have any enforcement powers in this area.

6.4 It was **AGREED** that a formal response to the Designation Review Statement would be drafted which would identify areas where ATVOD had already undertaken or had planned to undertake and areas where ATVOD welcomed further dialogue with Ofcom.

7. Multiple Services Draft Consultation

7.1 Directors **CONSIDERED** a draft consultation paper on the proposal developed with industry that each service provider should from 1 April 2013 make a single overarching notification covering all the services that fall under their editorial responsibility. It was **NOTED** that ATVOD had worked with the industry forum through a working party to develop the proposal which would reduce the administrative burden on service providers without compromising the regulatory protection offered to consumers.

7.2 It was **AGREED** that the consultation would:

- ask respondents for help in ensuring that the solutions were workable over the long term;
- include worked examples to help explain the different cost options;
- include a paragraph to reassure stakeholders that the proposed change would not affect concessionary rates at the start of the consultation; and

- be updated to reflect some minor typographical changes.

7.3 In addition it was **RECOMMENDED** the CEO consider whether the consultation could include flexibility over the proposed way in which notifications were made for multiple services in order to meet the differing needs of service providers and flexibility over the requirement to notify additional services during the notification year. It was **AGREED** that the new draft wording would be sent to the working party in advance of publication. Directors **DELEGATED APPROVAL** for final sign off to the Chair. It was **AGREED** that the Consultation should last for six weeks in order to ensure that the results of the consultation could be included in the 2013/14 Fees Consultation. However it was **RECOMMENDED** that the consultation be extended to eight weeks if the timetable for the drafting of the 2013/14 Fees Consultation permitted.

8. AVMS Implementation Research

8.1 Directors **CONSIDERED** research which had been conducted on the implementation of the AVMS Directive in other Member States. This report was a second report which covered Italy, Spain, Belgium, Sweden, Denmark and Austria.

8.2 Directors **NOTED** a summary of the conclusions of the research. It was **AGREED** that the summary would be circulated to Directors. It was **NOTED** that the research identified many differences between the approaches taken by different countries, but that ATVOD did not appear to be the outlier some critics had suggested.

8.3 It was **AGREED** that the report would be combined with the previous report which had covered Germany, France, the Netherlands, Ireland and Finland. It was **AGREED** that the combined report would be formatted for publication and include an executive summary of the research. It was **AGREED** that prior to publication the information in the report would be verified with the respective countries as far as was practicable and that the report would be published with a clear statement identifying how it had been produced and that it was based on telephone research.

8.4 Directors **AGREED** to take up an invitation to meet with the Belgium Regulator if practicable to do so.

9. ATVOD Code of Conduct

9.1 Directors **CONSIDERED** draft changes to ATVOD's Code of Conduct which were proposed to:

- update the gifts and hospitality section as requested at the May 2012 Board;
- ensure it correctly mirrored relevant legislation in relation to the approval of Director's interests as agreed at the July 2011 Board meeting; and
- ensure that it appropriately reflected terminology used in ATVOD's Articles (which were agreed subsequently to the Code).

9.2 Directors **REQUESTED** that the Executive consider whether the Code should make

reference to the Bribery Act 2010 and if so include reference as appropriate. The Board **AGREED** the proposed changes for publication, subject to some additional amendments as agreed at the meeting.

10. Any other business

- 10.1** Directors **AGREED** that the November strategy day would be a half day meeting and would cover the Leveson Inquiry as well as other issues and the annual Board evaluation.