



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, Wednesday 20 October 2010, 14.30pm

Received

Present:

Ruth Evans (RE) – Chair	Nigel Walmsley (NW)
Daniel Austin (DA)	Pete Johnson (PJ) – Chief Executive
Simon Hunt (SH)	Ronee Isaacson (RI) - Co Secretary
Chris Loweth (CL)	(Mins)
Ian McBride (IM)	
Sara Nathan (SN)	

		ACTION
1.0	Apologies	
	Apologies were received from Simon Milner and Julia Hornle	
2.0	Declarations of interest in relation to agenda items	
	DA declared, given his current employment with Sky, that he has an interest in agenda item 11 and therefore would leave the room at this point in the meeting.	
3.0	Annual declaration of lack of conflicts	
	The Code of Conduct for Board Members requires that each Director/Member signs an annual declaration that they have no interests which conflict with their duties as Board Members, other than those which have been disclosed. PJ stated that the declarations would be resent to Directors to ensure that the wording of the declarations reflect these facts.	
4.0	Minutes	
3.1	The Board Minutes of the meeting of 29 September 2010 were approved subject to the following amendments:	

- “Sarah” should be amended to “Sara” Nathan;
- Individual names should be removed from the minutes unless needed for context;
- In paragraph 5.2 the full name of ATVOD should be included in the minutes; and
- Typo in paragraph 7.2.

5.0 Matters Arising

Objective setting

SH agreed to provide a paper in relation to his objectives for the next Board meeting. SH

6.0 Action points

It was agreed that the action points should be circulated as soon as possible after the Board meeting. RI

7.0 Market Developments

SH presented to the Board an overview of how new developments and trends in the market could impact ATVOD. SH discussed developments for next year which include the launch of YouView (the joint venture between, the BBC, ITV, Channel 4, Channel 5, BT, Talk Talk and Arqiva) in the first half of 2011 and that Sky will be launching Anytime + (a new internet enabled STB with streamed VOD capability).

The Board discussed that it would be helpful to understand the extent to which consumers are using VOD. CL agreed to investigate securing a presentation on VOD usage figures and SH agreed to investigate sourcing figures on VOD usage. CL/SH

8.0 Chief Executive’s Report

No paper was tabled. The following verbal update was given:

Industry funding initiative

PJ updated the Board on the outcome of ATVOD’s meeting with industry, chaired by Kip Meek, to secure extra funding. PJ stated that he was hopeful that at least 12 companies would be willing to provide extra funding to ATVOD.

The Board agreed that PJ should send out acceptance letters to those Companies which have already committed to provide funding and to arrange for the BSG to circulate to all those approached the outcome of the process. PJ

New Staff Member

PJ updated the Board that the new employee of ATVOD had started and was commencing work on investigating companies in scope which still needed to notify. PJ stated that with the additional resource, the bulk of the remaining issues regarding scope should be able to be worked through in a timely manner.

Strategy Day

The ATVOD strategy day would be held on 8 November. It was agreed to have a facilitator for the day.

Change of registered name and office

Subject to receiving the relevant authorisation from the Secretary of State, the Board unanimously resolved to change ATVOD's name from "*The Association for Television On-Demand Limited*" to "*The Authority for Television On-Demand Limited*". The change of name shall take effect on the date the Secretary of State gives his authorisation for the name change.

The Company Secretary was tasked with dealing with the relevant paperwork at Companies House once the Secretary of State has approved the name change. RI

In relation to changing the registered office from Virgin Media to ATVOD's office, it was discussed that it makes most sense if the new registered office becomes the new Company Secretary's office. As the new Company Secretary is yet to be appointed, the resolution would not be tabled at this Board meeting.

Complaints

PJ explained that ATVOD is obliged to submit a report on the performance of its duties and the complaints it has received to Ofcom on a 6 monthly basis. The first report falls due on 31 October. For the period ATVOD has been responsible for complaints (20 September to 30 September), there had been 1 complaint. PJ will circulate a copy of the complaints report sent to Ofcom at the next Board meeting for information. PJ

Cost of enforcement action

PJ reminded the Board that Ofcom can reclaim the cost from ATVOD of any enforcement action it takes against a service provider. To date, PJ stated, that Ofcom's costs for this year are reasonable given the work undertaken. A final figure would be submitted to the Board as soon as ATVOD receives it. It was also discussed and agreed that PJ would investigate the possibility of agreeing service levels and costs with Ofcom with regard to any enforcement action. PJ

Company Secretary

PJ explained that he is continuing with the search for a new Company Secretary. The role envisages both administrative tasks (i.e. taking of Board minutes, sending out Board papers) and high-level advice to the Board. There are number of candidates PJ is currently in discussions with and will update the Board accordingly of any developments.

9.0 Financial Report

The Financial Report paper was referred to.

The Board were informed that the audited accounts for the year ended 31 December 2009 have been returned to the Auditors and filed at Companies House.

In relation to the September accounts, PJ highlighted that of the debtors over 90 days' old, two had been referred to Ofcom for enforcement action. The Board queried a few of the debts and PJ agreed to confirm the status of trade debtors at the next Board meeting.

PJ

10.0 Fees

a. Concessionary rate consultation

PJ updated the Board that he is still waiting for Ofcom to confirm whether the concessionary rate needs to be consulted on.

b. Year Two Consultation

ATVOD's recommendation for the level of fees for Year Two has not yet been formulated. Further information needs to be ascertained on the following:

1. The likely cost of performing the designated duties in Year Two;
2. Industry's views on the fees; and
3. The number of notifications.

The Board agreed to discuss the level of Year Two fees at the strategy day. The Board was reminded that the consultation should be issued prior to end of January 2011 in order that the fees can be approved by April 2011.

11.0 Notifications

a. New Notifications

PJ noted that following the publication of the scope guidance, it was accepted that one service provider had notified for one too many services and therefore ATVOD had accepted that the additional fee it had paid would be retained and set against the additional funding the service provider had agreed to provide.

PJ noted that there were currently 235 open investigations regarding services which were possibly within scope.

b. Preliminary determinations (paper)

The Board reviewed the preliminary recommendations on scope and after discussing each service agreed with the recommendation in the Paper. The Board made the following preliminary recommendations:

- a. Press Bureau TV: Recommendation – the Board endorses the executive's preliminary recommendation that the service is an ODPS
- b. Thompson: Recommendation – the Board endorses the executive's preliminary recommendation that the service is not an ODPS
- c. The Sun TV: Recommendation – the Board endorses the executive's preliminary recommendation that the service is an ODPS

In relation to one service, the Board discussed that an "informal resolution" was not possible within the scope of ATVOD's powers.

PJ was tasked with issuing "preliminary view" letters to the relevant service providers and explaining that "informal resolution" was not possible.

PJ

It should be noted that Daniel Austin left the meeting when the discussion concerned the service provider that Sky has an interest in.

c. Final Determination (Paper)

The Board was referred to the paper detailing the services which have been issued with notices of ATVOD's final determination that they are in breach of their obligation to notify.

In one instance, the service was deemed to be out of jurisdiction following the provision of new evidence. PJ was instructed to withdraw the final determination decision for this service provider.

PJ

12.0 Promoting Access for people with disabilities

The Board was reminded that ATVOD submitted an access service plan to Ofcom on 30 June 2010 and that Ofcom had requested some changes which had been approved by the Board. Since then, PJ and DA had met with Ofcom and further amendments were requested.

A discussion was had at the meeting about how ATVOD could "encourage" service providers to make their services accessible to people with disabilities. It was decided that industry should be involved in this process and that Ofcom should be involved initially to facilitate the discussion but not thereafter as industry and ATVOD should lead discussions.

DA and PJ were tasked with responding to Ofcom on the access service plan.

DA/PJ

13.0 Governance issues

a. Redrafting the Articles of Association (paper)

The Board considered the recommendation paper on redrafting the articles of association.

The following recommendations were approved by the Board:

1. Recommendation 1: the articles should include an obligation to establish a means of engaging with the industry. However, the Board agreed that the Articles should not be prescriptive about how this should be achieved.
2. Recommendation 2: the articles should give all Board Members the status of "Member" but in order to maintain independence should establish quorum conditions for Member meetings (including the AGM).
3. Recommendation 3: The articles should give industry a formal role in relation to Board appointments.
4. Recommendation 4: The articles should be clear about the processes to be followed with regard to Board appointments, should require the appointment of a deputy chair and should set out the relevant terms of office. It was noted that if the deputy chair is a candidate for the chair, then another independent director should be nominated by the Board. The Board should also approve appointments.
5. Recommendation 5: The articles should be clear about the distinction between Independent and Non-Independent Board Members and should stipulate that the Chair and the Deputy Chair should be independent.

	DA was asked to bring a first draft of the Articles of Association to the December Board Meeting.	DA
	<p>b. Register of interests/hospitality</p> <p>The Directors were asked to provide ATVOD with a list of interests by the end of the month and to update the hospitality register.</p>	ALL
14.0	<p>Items for information only:</p> <p>a. Press cuttings (paper)</p> <p>b. Revised Scope Guidance (paper)</p> <p>The Board discussed that whether two or more versions of a service are to be treated as a single service or as separate service will depend on the definition of “substantially the same”. The Board agreed that it would be helpful if worked examples were provided so that they could consider the parameters of what “substantially the same” means. PJ agreed to provide the Board with worked examples by the December Board meeting.</p> <p>c. Ofcom report to DCMS on protecting children from pornographic content (paper)</p> <p>The Board asked PJ to prepare a FAQ to ATVOD’s position on protecting children from pornographic content.</p>	PJ
15.0	<p>AOB</p> <p>PJ updated the Board that the new ATVOD website is currently being developed. Target date is January for launch. PJ agreed to arrange a demonstration for the next Board meeting.</p> <p style="text-align: center;"> <i>There being no further business, the meeting closed</i> <i>at 17.15pm</i> </p>	PJ