



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 Five, Thursday 22 July 2010, 14.30pm

Received

Present:

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

		ACTION
1.0	Apologies	
	No apologies were received.	
2.0	Maintaining the independent majority	
2.1	In order to maintain the independent majority on the Board, SH agreed to be designated as the “silent” Director for the duration of this Board meeting.	
3.0	Minutes	
3.1	<ul style="list-style-type: none">○ The 24 June 2010 Board minutes were approved without amendment. The Board agreed to publish future Board minutes on ATVOD’s website.	

4.0	Matters Arising	
	<u>Objective setting</u>	
4.1	The Fulfilment of Board Objectives – July 2010 document was referred to.	
4.2	The Board discussed the papers prepared by each of the Directors setting out how the Director would fulfil his objectives as set by the Board. DA and SH agreed to provide a paper in relation to their objectives for the next Board meeting.	DA/SH
4.3	The Board Objectives – June 2010 document was referred to.	
4.4	The Directors discussed the objectives for the Board. The Board identified that the following Directors would be the lead for the key areas identified in the Board Objectives paper: <ul style="list-style-type: none"> - NW - Resources; - SN - Governance; - SM - Stakeholders; - RE - Corporate Plan; and - CL - Content. 	
	<u>Strategy day</u>	
4.5	The Board discussed whether a facilitator would be needed for the forthcoming strategy day. The Board agreed that the strategy day would need to be further discussed at the September Board meeting.	
4.6	In order to prepare for the strategy day, the Board requested that each Director considers how ATVOD should approach the following four issues, which will be discussed in detail at the strategy day: <ol style="list-style-type: none"> 1. What is ATVOD's mission, vision and values; 2. How does ATVOD fulfil its functions (including a consideration of budget); 3. How should ATVOD approach governance; and 4. How/who should ATVOD communicate its strategy to. 	All
4.7	The Board requested that PJ to outline a plan for the strategy day.	PJ
	<u>Co-regulation</u>	
4.8	The Board discussed what co-regulation means in practice and the definition of co-regulation, as set out in the Communications Act. As further information was needed on the legal definition, DA agreed to research the statutory definition of co-regulation for the next Board meeting.	DA
5.0	Action Points	
5.1	The Board discussed of the following outstanding action points: <ul style="list-style-type: none"> ○ <u>Secondee:</u> SM updated the Board that there may be a possibility for a BT secondee ○ <u>Overview of market:</u> SH would provide an update at this meeting and going forward 	

- Memorandum and Articles: it was hoped that a first draft would be available for the September Board meeting.
- CEO Directorship: It was discussed that the articles should provide that the CEO is also a director of ATVOD. Currently, the CEO is not a director of ATVOD.

6.0 Market Developments

6.1 SH presented to the Board an overview of how new developments and trends in the market could impact ATVOD. SH discussed the impact of Canvas, multi-screen applications, Google TV and the iPad. SH explained there has been a proliferation of services operating across multiple devices such that consumers are increasingly using functionality which allows them to watch content across different devices. From ATVOD's perspective, this may mean that as viewers switch device, they could move from a regulated to an unregulated environment, which consumers may not be aware of.

6.2 It was agreed that SH should continue to present an overview of the market at each Board meeting. SH

7.0 Chief Executive's Report

7.1 No paper was tabled.

7.2 PJ updated the Board on services that have potentially failed to notify ATVOD that they are operating an on-demand programme service. In particular:

- 67 services are currently being investigated for not notifying (this is an additional 30 services to last month);
- ATVOD is in the process of identifying further services that have not notified and at the end of July, it is expected there will be 160 open cases.
- Of the services who have notified, 32 have stated that they are available on more than one platform. ATVOD will need to consider in those cases, the range and balance of programming to establish whether the services are "substantially the same".

R18

7.3 PJ met with Stewart Purvis (Ofcom) regarding the implications of the guidance the CPS had published for prosecutors which suggested that R18 and equivalent material which is accessible to children on line is likely to be considered obscene under the Obscene Publication Act.

7.4 PJ had also attended a round table discussion with enforcement agencies, Ministry of Justice, DMCS, and Ofcom on the same issue.

7.5 PJ also met with John Zeff (DCMS) and discussed the issue. DCMS also reminded ATVOD that the European Commission's 2 year review of AVMS implementation is about to commence.

Industry funding initiative

7.6 RE and PJ had met with Anthony Walker to discuss the BSG facilitating a meeting between industry and ATVOD. It is proposed that Kip Meek will chair a meeting

with industry on 13 September to discuss the potential for additional industry funding for ATVOD. Letters to relevant industry CEOs will be sent out shortly.

8. Fees – concessionary rate

- 8.1 ATVOD and Ofcom have to date received 20 responses to the request for information regarding a possible concessionary rate. The Board discussed that it would be preferable to have a strict criteria (i.e. that the service must be for public purposes and not for profit) for a concessionary rate in order to make the concession more generous. PJ commented that there are 196 universities who would potentially have to notify but are likely to be subject to a concessionary rate.
- 8.2 The Board were informed that the issue of concessionary rates will be subject to a public Consultation which is likely to be published in September.

9 Financial Report

- 9.1 The Financial Report paper was referred to.
- 9.2 The Board agreed that a further instalment of £2500 plus VAT would be paid in September to the recruitment agency as a “finder’s fee” for the Office Manger. This is the last instalment and is payable as the Office Manager is being retained beyond the initial 6 month introductory period.
- 9.3 The draft accounts for the year ended 31 December 2009 were presented at the Board meeting. The three Directors (SM, CL and SH) who served during this period provided assurances that (i) there is no relevant audit information of which the company’s auditor is unaware; and (ii) the directors have taken all steps they ought to have taken to make themselves aware of any relevant audit information and to establish that the auditor is aware of that information. It was agreed that the accounts could be signed off by RE on the Board’s behalf.

Fee Payment

- 9.4 PJ informed the Board, that an additional 3 fee payments had come in since sending out the Board papers.

Q2 accounts

- 9.5 The Board was presented with the Q2 accounts for the quarter ended 30 June 2010.
- 9.6 PJ stated that notification fees were coming in slightly ahead of the budgeted time and that expenditure was slightly below the budget. In light of this, it may not be necessary to draw down on the Barclays facility for July/August.
- 9.7 RE thanked PJ and NW for a good turnaround on the budget particularly regarding the overdraft.
- 9.8 Soft copies previous circulated were complete, but as hard copies were missing some sheets, PJ said he would provide a new set of papers for September’s Board meeting.

PJ

10 Notifications

a. Investigation and enforcement process

10.1	The Potential Failure to Notify – Investigation and Enforcement Process paper was referred to.	
10.2	<p>The Board reviewed the paper which sets out a step-by-step process to identify whether a service has breached the requirement to notify and the enforcement process ATVOD should follow in such circumstances. After further discussion, it was confirmed that:</p> <ul style="list-style-type: none"> ○ PJ would make the ‘stage five’ decision (the preliminary decision as to whether a service is an ODPS). ○ the full Board would consider ‘stage eight’ determination decisions (i.e. the final determination that there had been a failure to notify in cases where the service provider had disputed the preliminary decision). 	
10.3	PJ was asked by the Board to provide a list of all the services which are under investigation in time for the next Board Meeting. The Board also requested that DA provides a list of services on Sky’s platform.	PJ DA
10.4	As part of a general discussion around notification, the Board discussed that it should develop an understanding of which services are likely to show “riskier” content (in terms of adult content, sponsorship, or product placement), as these services are likely to create increased regulatory risk.	
10.5	The Board also discussed the increasing trend for adult broadcasters to have a Dutch (rather than an Ofcom) licence and that this risk may spill over into on-demand services. In terms of the proportion of adult services ATVOD regulates, PJ stated that there might ultimately be up to 20 adult notifications.	
	b. Scope criteria – sub-group recommendations (paper)	
10.6	The Board was referred to a revised draft of the Scope Criteria Recommendations.	
10.7	The Board discussed how to inform stakeholders of this policy document. The Board agreed that the document should be written in plain English and that expressing the various worked examples as FAQs should be considered.	PJ
	c. Decisions required on scope (paper)	
10.8	The Board referred to the ‘decisions required on scope’ paper.	
10.9	The Board agreed that, given the decision taken at para 10.2 with regard to the investigation process, the recommendations of the executive in relation to the preliminary determination to be made with regard to each service identified in the paper would stand..	
11.0	Promoting access for people with disabilities (paper)	
11.1	The Board referred to the letter from ATVOD to Stewart Purvis of 30 June 2010. PJ informed the Board that Ofcom understood the lack of resources available to ATVOD, however Ofcom still had expressed its desire that ATVOD’s plan should among other things, reflect the work already done in this area with respect to linear services and should emphasise the importance of subtitling and audio description. The Board discussed the messaging to service providers regarding their obligations around access services. The Board also discussed that it should seek	

industry's views on how it would promote these services.

12.0 Promoting EU works (paper)

12.1 The Board referred to a letter from ATVOD to Stewart Purvis of 30 June 2010 setting out ATVOD's plan as to how it will fulfil its duties in respect of European works. PJ advised the Board that Ofcom was happy with the proposed plan subject to certain relatively minor amendments.

13.0 Complaints (paper)

13.1 PJ informed the Board that the Complaints paper is currently being reviewed by Ofcom

14.0 Key Performance Indicators

14.1 PJ informed the Board that this paper is currently with Ofcom for approval

15.0 Rules and Guidance

15.1 The Board was referred to the draft Rules and Guidance paper.

15.2 PJ had received feedback from Ofcom that the Guidance should make it very clear the difference between the statutory rules and the non-binding guidance. Ofcom had also commented on the guidance on seriously impairing minors, sponsorship and product placement. The Board agreed that provided there was no change to the substance of the guidance on material which 'might seriously impair', the document should be published once Ofcom's further comments had been taken into account and formal written approval from Ofcom received

16.0 Protection of children (from pornographic and other inappropriate content) (paper)

16.1 The Board referred to the sub-committee's report to ATVOD on "ATVOD's approach to Ofcom's report on protecting children and R18".

16.2 The Board discussed ATVOD's input into DCMS' investigation of whether the implementation of the AVMS Directive in the UK has, in practice, provided sufficient safeguards to protect children. The Board discussed that protection of children is a crucial issue for ATVOD to consider.

16.3 After further discussion, it was agreed to adopt the sub-group's recommendation, as set out in the paper, for submission into the DCMS review. In particular, the Board agreed that ATVOD's view is that R18 material or equivalent should only be made available in on-demand programme services in a manner which under 18s cannot normally see or hear it.

16.4 In relation to further work regarding the protection of children, ATVOD agreed that discussion and agreement with industry was necessary before any decision to go beyond ATVOD's statutory remit was taken..

17.0 Role in promoting best practice (paper)

17.1 The Board was referred to the paper on the proposed approach for developing a voluntary code of best practice.

17.2	The Board discussed the issue that as fees collected from service providers may only be used for complying with ATVOD's obligations and duties under the designation agreement, ATVOD has no resource to deal with the development of a voluntary code. The Board considered however that ATVOD should gauge the level of support from industry for such a voluntary scheme.	
17.3	The Board agreed that CL and SM should talk to the BSG to gauge whether there is an appetite for such a scheme. SH undertook to seek funding from Virgin Media for necessary development work.	CL/SM/SH
18.0	Corporate planning (paper)	
18.1	The Board was referred to ATVOD's outline corporate plan for the year 2010 to 2011.	
18.2	PJ and RE agreed to further develop the plan. Once finalised the plan will be published on the ATVOD website	RE/PJ
19.0	Board members' objectives (paper)	
	This was dealt with at item 4 in the agenda	
20.0	Governance issues	
	a. Mem and Arts	
20.1	A first draft is being drafted by Sky and will be discussed at the September Board meeting	DA
	b. Governance/Code of Conduct/Register of Interests/Data Protection (paper)	
20.2	The Board was referred to the Code of Conduct paper. The Board discussed the implications of the paper and in particular, how the policy on expenses would work.	
20.3	It was agreed that: <ul style="list-style-type: none"> - The Chair would approve the expenses of the Board members; - the Deputy Chair would approve the expenses of the CEO - The CEO would approve the expenses of the Chair and the staff - In relation to travel, in line with civil service policy, first class travel would only be permitted if it equates to the same cost (or less) as the standard walk on fare. SN agreed to update the policy to reflect the changes. 	SN
20.4	The Company Secretary was tasked with drawing up a register of Directors' and Members' interests and a hospitality log.	RI
	c. Company Secretary	
20.5	The Company Secretary was tasked with drawing up a complete list of all the company secretariat functions.	RI
21.0	Stakeholder engagement	
21.1	SM updated the Board that he would be attending the Edinburgh Television Festival and would be able to use the opportunity to discuss ATVOD.	

- | | | |
|------|--|-----|
| 21.2 | RE stated that the Board needs consider how ATVOD inter-relates with UKCCIS She suggested that it would be advisable for the ATVOD to recruit to the independent director's position a person with experience in child protection. | |
| 21.3 | It was agreed that SH would discuss with RE and PJ a programme for the Board which looks at stakeholder engagement. | SH |
| 21.4 | All the Board were asked to think about people who could come and address the ATVOD board this year. | ALL |

22.0 AOB

- 22.1 PJ reminded the Board that £17,000 remained in the "old" ATVOD account. The "old" ATVOD board members stated that they not know of any obligation or previous discussion relating to the return of that money to the old members.

There was no other business

*There being no further business, the meeting closed
at 18.30pm*