



THE AUTHORITY FOR TELEVISION **ON DEMAND**

Minutes of a meeting of the Board of the Authority for Television On Demand Limited (“**ATVOD**”) held at Regus, Thames Court, 1 Victoria Street, Windsor SL4 1YB on Wednesday 4 December 2013 at 3.00pm

Present:

ATVOD Board:

Ruth Evans – Chair
Gidon Freeman
Julia Hornle
Sophie Jones
Ian McBride
Nigel Walmsley
Paul Whiteing

In attendance:

Pete Johnson – Chief Executive
Jan Quirke – Company Secretary
Cathy Taylor for items 9 to 12 and Jhaapjeet Kaur Panesar and Susan Robinson for item 12.

1. Apologies

Apologies were received from Daniel Austin.

2. Declarations of interests

There were no declarations of interest to be reported in relation to items presented for discussion at the meeting nor for inclusion in the register of interests.

3. Minutes

3.1 Board meeting on 24 September 2013

The minutes were **AGREED** as an accurate record of the meeting.

3.2 Board Strategy discussion on 9 October 2013

The notes of the meeting were agreed.

3.3 Industry Forum meeting on 24 September 2013

The minutes of the meeting had been approved and circulated.

3.4 Actions and matters arising

The reported actions were **NOTED** and oral updates given.

Ofcom's response to the EU Commission Green Paper 'Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values' will be circulated to Board members. **ACTION: JQ**

The Board **NOTED** that the Guidance notes for adult service providers and commercial references and product placement had been sent to Ofcom.

4. Board member recruitment

Ruth Evans reported that three candidates for the position of Non-Independent Board Member had been interviewed on 4 December. The Board **APPROVED** the Recruitment Panel's proposal that Alex Kann was appointed as a member of the ATVOD Board. Alex is the General Manager of the Community Channel (providing access to TV for charities and others to promote good practice or disseminate information). The Panel had been greatly impressed by Alex Kann's application and considered that he would be able to contribute greatly to the Board. Alex Kann's CV will be circulated to the Board. **ACTION: JQ**

Once the formalities had been completed an announcement would be made and Alex Kann invited to join the Board to attend his first meeting 28 January 2014. The press release will highlight Alex's extensive experience of VOD issues and his ability to reflect the perspectives of the small scale and non-commercial sectors. Reference will be made to ATVOD's continued commitment to adult industry engagement following Chris Ratcliff's departure from the Board. **ACTION: PJ**

The two unsuccessful candidates would be encouraged to continue to engage with ATVOD. Consideration will be given to establishing a sub-group of the Industry Forum to facilitate engagement with the adult industry. **ACTION: PJ**

5. Chief Executive's report

New notifications

- 5.1 The Board **NOTED** the information presented on new notifications and the withdrawal of services. Three new notifications were received in September – October 2013 and three were withdrawn in the same period.

Breach investigations

- 5.2 22 new investigations had been started in September – October 2013. Breaches in relation to Rules 6, 7 and 11 were **NOTED**.
- 5.3 Pete Johnson reported that the significant decline in open investigations was due to excellent performance and hard work by Cathy Taylor and Jhaapjeet Kaur Panesar.

Complaints and content breaches

- 5.4 The Board noted that complaints relevant to ATVOD were a small proportion of the overall number of complaints received.
- 5.5 40 new complaints had been submitted in September and 54 in October 2013. Four complaints are awaiting scope determination. Details of complaints and content breaches were **NOTED**.

Enforcement action

- 5.6 The Board **NOTED** three referrals to Ofcom. One service has been referred for consideration of a sanction for the breaches of Rules 1.6 and 7. ATVOD served a Statutory Demand for breach of Rule 4 and a Winding Up Petition may be issued as

payment has not been received by the deadline. Two services have been closed; one after receiving an enforcement notification from ATVOD and one following receipt of a direction from Ofcom.

- 5.7 The Board **DISCUSSED** the circumstances of one specific case. This will be discussed with Ofcom at a routine meeting on 5 December.

European works

- 5.8 The Board **NOTED** that four service providers had failed to provide data on European Works before the deadline of 30 October 2013. One appeared to have closed and two had undertaken to provide the requested data shortly.

- 5.9 The remaining case was **DISCUSSED** by the Board and was **CONSIDERED** to be significant because it was a statutory requirement for ODPS providers to furnish ATVOD with information requested under section 368O of the Communications Act. A preliminary view that the provider was in breach of Rule 6 had been issued and the provider's response to the preliminary view was awaited.

DCMS Strategy Paper

- 5.10 Issues relating to Access Services were discussed under item 10. The Board **NOTED** the Government's plans to legislate to outlaw material which goes beyond R18 and to remove any doubt that R18 material needs to be kept out of reach of children.

- 5.11 The Board **NOTED** that the proposed common framework for media standards might include provision for protection of minors, hatred, consumer protection and protecting individuals. Meetings with other media regulators were being held under Ofcom's chairmanship to consider this issue.

Scope guidance review

- 5.12 The board **NOTED** that to date no submissions had been received on ATVOD's Scope Guidance Review consultation document which had been circulated in September with a deadline for comments of 17 December 2013.

Culture Media Sport Select Committee Enquiry

- 5.13 The Board **NOTED** that an enquiry had been launched into online safety and that only one area related to ATVOD's work – how best to protect minors from accessing adult content. ATVOD was not called upon to give oral evidence, but had made a written submission.

Preventing payments to sites which allow children to access hardcore pornography

- 5.14 The Board **NOTED** the results of the roundtable meeting with representatives of the financial industry on 10 October 2013.

- 5.15 The impact of preventing payments on free sites was discussed. It was noted that the free sites depended on a flow of funds from pay sites and were often run by the same companies. The purpose of the initiative was to undermine the business model which promotes free unrestricted access to adult services. The incentives to service providers would be commercial; to gain access to paying UK customers.

- 5.16 The Board **CONSIDERED** the following:
- The Payments Industry's conclusion that the Obscene Publications Act does not provide adequate grounds for blocking payments and that firmer statutory underpinning is required. The briefing paper to DCMS setting out options was noted;

- a working party has been established with the payments industry to consider how preventing payments might operate in practice and the Board will receive reports of meetings in November and December;
- the statutory underpinning and who gathers information are two key issues to be resolved;
- DCMS would be encouraged to respond in time to feed back to the ATVOD/Payments Industry meeting on 6 December 2013. **ACTION: PJ**

5.17 The Board **AGREED** to continue to explore the possibility of ATVOD taking on the role to gather evidence on adult websites operating in breach of UK law.

Seminar for small scale providers

5.18 The Board **NOTED** the report of the seminar held on 16 October 2013 which had been attended by 30 delegates and received positive feedback. In response to the comment that adult providers dominated the discussion, future events will be split to provide separate sessions for adult providers.

December conference

5.19 The Board **NOTED** the draft agenda for the conference on 12 December 2013. The Board thanked Julia Hornle and Paul Whiteing for all they had done to organise the conference.

Meetings in Brussels with EU Officials and MEP

5.20 Sophie Jones reported on a conference run by the Europe Forum on internet safety and meetings held by Ruth Evans, Pete Johnson and herself with Robert Madelin and Marcel Bolougne (DG Connect), Anna Athanasopoulou and Emmanuel Joly (DG Culture), Michele Socco (DG Home Affairs), Jonathan Hill (DG Culture) and Sabine Verheye, MEP.

5.21 The meetings had been positive and everyone had been well-briefed and demonstrated a good knowledge of ATVOD's role and work. ATVOD was seen as providing a pragmatic response to AVMS and there was sympathy to the difficulties of interpretation of the issues facing service providers and regulators. Future meetings had been welcomed by DG Connect and DG Culture.

5.22 The Board **NOTED** other press and public relations activity.

6. Risk Register

6.1 The Board **APPROVED** the proposed changes to the Register.

6.2 For the next update of the Risk Register consideration would be given to the risk to ATVOD of an absence of relevant legislation in relation to R18 material. **ACTION: PJ**

7. Research Options

7.1 The Board **CONSIDERED** the options set out in the paper for the research budget and **AGREED** to conduct further investigation into specialist IT research strategies for identifying anonymous website operators and market intelligence research identifying the adult websites mostly commonly accessed from the UK.

7.2 There was no need to publish the results of any research if to do so could result in abuse of the system.

7.3 Research plans would be discussed with the Industry Forum before being finalised.

8. Finance Report

- 8.1 The Deputy Chair introduced the Financial Report and the Board **NOTED** the management accounts for August and September 2013 and the Aged Debt report to 30 October 2013.
- 8.2 The Board **NOTED** the draft minutes of the Audit and Finance Committee meeting held on 19 November 2013 and thanked Nigel Walmsley and Pete Johnson for their sound budgetary and financial management of ATVOD.
- 8.3 A first look at next year's draft budget anticipated a very similar profile for ATVOD as in 2013/14 with the addition of a staff member to assist with determinations and complaints. It was likely that the financial outturn at year end would be positive and that ATVOD could budget to spend more than is collected in fees to reduce the continued accumulation of reserves. This position could result in ATVOD not needing to increase fee levels in 2014/15, with potential to require a slight increase to fees in 2015/16 which can be flagged to service providers in 2014/15. The Board **NOTED** the repayment of all initial start-up loans. The draft budget would be subject to further review nearer the end of the current financial year and in time to serve as a basis for the annual fees consultation likely to take place in late January.
- 8.4 Staff members and the relevant Board members (excluding the Chair) left the meeting for discussion of their salaries. The Board **AGREED** to include a 2% increase in the budget for staff and paid Board members' salaries; to be approved in due course as part of the budget approval process.

9. Access Services Report

- 9.1 Cathy Taylor attended the meeting and presented the findings and recommendations resulting from the 2013 survey on access service provision.
- 9.2 The main reason that providers gave access to services for those with hearing and sight disabilities was because they had provided accessible services through audio description, signing and subtitles on TV services; these were usually public service providers. Barriers to access include technical issues, administrative barriers and lack of clarity over whom in the chain of provision has responsibility for accessibility.
- 9.3 The Board **CONSIDERED** the report and **NOTED** the next steps including the drafting of an updated access services plan. This would take into account a letter expected to be received shortly from DCMS and the interim technical working group report due shortly from Nick Tanton. Consideration will be given to whether to make future surveys compulsory. ATVOD will continue to engage with service providers and the ATVOD Technical Working Group to focus on sharing information and identifying the most promising technical standards for access service provision. A proposed plan will be developed with Daniel Austin for presentation to the Industry Forum and other stakeholders before the ATVOD Board meeting on 28 January 2014.
- 9.4 The Board **APPROVED** the 2013 Access Services Report for publication.

10. Complaints/Determinations Process – final draft

- 10.1 Paul Whiteing requested that clause 20 in the section on 'How to complain' should be checked for clarity. With this provision the Board **ADOPTED** the proposed Breach

Determinations process as presented with an effective date of 1 January 2014.

ACTION: CT/PJ

10.2 The Board **AGREED** to establish a Determinations Committee from 1 January 2014 with Ian McBride (Chair), Daniel Austin, Paul Whiteing and, as an interim to March 2014, Julia Hornle to replace the existing Scope and Complaints Committees. It was further **AGREED** that non-members would be able to attend meetings.

10.3 The Board **AGREED** that Ofcom agreement will be sought on a proposed change to the existing KPIs for complaints handling.

ACTION: PJ

11. Board objectives update

11.1 The Board received an update on recent meetings in Brussels from Sophie Jones (see paragraphs 5.20-5.21, above).

11.2 The Board **NOTED** progress in meeting actions resulting from objectives identified for Board members. The outstanding actions relating to the implementation of the AVMS Directive and European Works duty will be reported in due course as the initiatives develop.

11.3 Board meeting dates will be emailed to the Board

ACTION: JQ

12. Staff presentations

12.1 Staff members were welcomed to the meeting.

Cathy Taylor and Jhaapjeet Kaur Panesar presented their work and answered questions on complaints and investigations. Susan Robinson and Jan Quirke outlined their respective roles at ATVOD.

13. Any Other Business

13.1 Ruth Evans reported on the recently completed Board evaluation exercise and thanked all Board members for completing the questionnaire. The responses had been heartening and positive with only one question scoring less than four out of five. The full results of the survey will be circulated to Board members and included as an item for discussion at the meeting on 28 January 2014.

14. Date of next meeting: 28 January 2014

Actions arising

item	action	who	when	progress
3.4	Ofcom's response to the EU Commission Green Paper 'Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values' will be circulated to Board members	JQ	December	Done
4.	Alex Kann's CV will be circulated to the Board	JQ	December	Done
4.	In the press release announcing the appointment reference will be made to ATVOD's continued commitment to adult industry engagement	PJ	December	Done
4.	The two unsuccessful candidates would be encouraged to engage with ATVOD. Consideration will be given to establishing a sub-group of the Industry Forum to engage representatives of the adult industry	PJ	January 2014	This is an item on the agenda for the Industry Forum meeting on 28 January 2014
5.16	DCMS would be encouraged to respond in time to feed back to the ATVOD/Payments Industry meeting on 6 December 2013	PJ	December	Done
6.2	For the next update of the Risk Register consideration would be given to the risk to ATVOD of an absence of relevant legislation	PJ	March 2014	This will be incorporated in the report to be presented to the Board in March 2014
10.1	Complaints/ Determination process: Paul Whiteing requested that clause 20 in the section on 'How to complain' should be checked for clarity	CT PJ	December	Done
10.3	Ofcom agreement will be sought on a proposed change to the existing KPIs for complaints handling	PJ	January 2014	In progress
11.3	Board meeting dates will be emailed to the Board	JQ	December	Done