



THE AUTHORITY FOR TELEVISION **ON DEMAND**

**Minutes of the
ATVOD Industry Forum
19 July 2011**

held at 43-45 Portman Square, London, W1H 6HN, between 11.00am – 1.00pm.

Present and in attendance:

Please refer to attached list – annex 1

1. Minutes of Meeting held on 24 May and matters arising

The minutes were approved, subject to some small amendments agreed at the meeting. It was agreed that Forum minutes would be published on the ATVOD website once approved by the Chair and distributed to Members. It was agreed that the Forum Terms of reference would be published on the ATVOD website. It was noted that following a request at the last meeting, ATVOD intended to amend the standard 'first contact' letter to include a reference to the Forum and would include reference to the Forum in stakeholder mail shots.

2. Joint meeting with ATVOD, DCMS and Ofcom to discuss industry concerns

Members were reminded that in March COBA had sent a letter to DCMS outlining their concerns regarding ATVOD. DCMS had subsequently replied suggesting a round table meeting between the interested parties. Members were updated on the content of a letter that COBA had written to DCMS and Ofcom which included a summary of their concerns and a suggested plan of action. Members noted that an initial meeting had been held between COBA, DCMS, Ofcom and ATVOD at which it was agreed that the suggested approach was the way forward. It was noted that COBA recommended a series of pre-meetings over the summer to enable the industry to be ready to have a constructive dialogue with DCMS, Ofcom and ATVOD in September.

Members heard that COBA were happy for the Forum to take over the lead on these meetings. Members had mixed views about whether the suggested plan of action was the right approach, but generally felt that as long as the agenda of the meetings was forward looking and didn't cover too much old ground the Industry Forum should be involved. It was agreed that the COBA summary would be circulated to Members and that those not at the meeting would be given a chance to comment. Members were asked to approach the Chair if they wanted to take part in the suggested DCMS/ATVOD/Ofcom meetings. It was noted that it was important that the various sub-sets of industry were represented at these meetings. It was also noted that as part

of the pre-meetings COBA had suggested that comparisons with other EU states should be made.

3. VOD industry representative on the Committee of Advertising Practice (CAP)

It was noted that one Member was attempting to obtain their company's permission to volunteer as a representative of the Forum on the CAP. The Chair advised that Members would be asked to approve a VOD industry representative in due course. Any other Member wishing to volunteer was asked to contact the Chair as soon as possible.

4. Update on Associate Members

At the May Forum meeting Members agreed that they should invite non ODPS companies to attend Forum meetings. The Chair advised Members of the suggestions which had been received to date. Members agreed that the following trade associations would be invited to attend meetings as Associate Members (with no voting rights but able to fully participate in discussion): PACT, PPA, NPA, BSG, COBA, United for Local Television, Community Media Association, AITA and BSAC. Additionally the ASA was considered as a self- and co- regulatory body which had a legitimate interest in the work of ATVOD in view of its responsibility with regard to advertising on ODPS. It was generally felt that to ensure the number of Associate members did not become too large any companies without a notified ODPS who wanted a presence should engage via their Trade Association. Members were asked to contact the Chair with further suggestions. It was noted that ATVOD would include reference to the Forum in stakeholder mail shots and provide a list of the trade associations which attended the Forum as Associate members.

5. Establishment of a Policy Committee

Members were generally supportive of the idea which arose from the 24 May Private Members Session to establish a Policy Committee, for example to help ATVOD draft revised guidance. ATVOD were very supportive of the idea and were happy for the Committee to start in September. Some Members felt that the Committee should start after the joint meeting with ATVOD, DCMS and Ofcom. Members were asked to contact the Chair with their views on setting up a Policy Committee, suggestions as to what this Committee could cover, how it should be constituted and whether they wished to volunteer.

6. Establishment of a Year Three Fees working party

Members heard that ATVOD would like to establish a year three fees working party to utilise industry expertise to consider cost effective, equitable and fair options for developing a sustainable long term fee structure. ATVOD wanted the working party to consist of representation from the various industry sub-sectors. ATVOD stated that it needed to start thinking about a long term fee structure with the working party in September otherwise it would struggle to get a new system in place for the beginning of year three. To meet this timetable it would be necessary to identify Industry Forum members of the working party by the end of July. Members were supportive of establishing a working party to try and find an administratively simpler and better way to fund ATVOD, which would ultimately reduce ATVOD's costs. It was noted that any proposal made by the working party would be subject to public consultation and

approval by Ofcom. Members were asked to let the Chair know how they thought this working party should be constituted and whether they would be willing to serve on it.

7. ATVOD's Draft Corporate Plan

ATVOD introduced its draft Corporate Plan to Members and asked for comments prior to it being published at the end of July. It was noted that ATVOD's planned outside UK engagement was in response to all national regulators being encouraged to foster relations with each other. It was noted that the planned review of guidance of sponsorship and product placement would be in conjunction with proposed Forum Policy Committee. It was noted that ATVOD had adopted new Articles of Association, which would be published on ATVOD's website. Members were requested to send comments on the draft Corporate Plan to the Company Secretary by 25 July 2011.

It was requested that ATVOD gave Members more detail on when it was going to circulate surveys on accessibility and what questions would be covered, possibly in the Monthly newsletter. It was noted that ATVOD had been gathering information on access services in order to demonstrate the progress which had been made in the UK. Demonstration of progress through voluntary means was likely to reduce the likelihood of access services provision becoming mandatory in future. Once ATVOD had formulated strategies as to how to promote access services, these would be discussed with the Forum. It was agreed that it would be worth the Forum considering the technical possibilities in this area and it was suggested that a working group be established.

8. ATVOD Update

ATVOD's Chief Executive gave a presentation on progress with ATVOD's work since the last Forum meeting – see annex 2 attached. Throughout the update questions were taken and the following points were noted from discussion:

- The definition of 'affiliation' to a larger company with regard to qualification for a commercial concessionary rate was raised. It was agreed that ATVOD would provide clarification.
- It was noted that if a service ceases business during a fee year it can, in certain circumstances, request a pro-rata refund of the notification fee. However ATVOD were unable to pro-rata fees for services who started during the year, based on advice from Ofcom, who approved the fees. ATVOD suggested that this issue be discussed at one of the Forum working groups. The Chair agreed to raise this issue with Ofcom at one of the round table meetings.
- ATVOD requested that Forum Members be involved in the recruitment of its Board members, by having a representative on each recruitment panel, alongside one ATVOD Board Member and an Independent Assessor. ATVOD's suggested recruitment process was based on the Commissioner for Public Appointments Code of Practice which was underpinned by the Nolan Principles, and ensured that fair, open and transparent processes were in place to ensure the correct appointments were made. It was noted that the proposal went beyond that of other co regulatory bodies, by involving industry representatives directly in the recruitment process for independent and well as non-independent members. Ofcom commented that prior to awarding ATVOD's designation,

ATVOD's Board needed to meet various criteria to ensure that it was sufficiently independent of industry. However Ofcom did not have a specific view on how ATVOD recruited its Directors. Members discussed this suggestion and agreed to discuss further at the private members session at the end of the meeting. Members were also asked to send their views on these suggestions to the Chair.

9. Ofcom Questions and Answers

Trevor Barnes (Head of Harm, Offence and Impartiality at Ofcom) introduced himself to the Forum and took a number of questions from the floor. The following points were noted:

- Ofcom's legal department provided advice on interpretation of the legislation as Ofcom remained ultimately responsible for regulation in this area and had to approve any guidance published by ATVOD. However ATVOD was able to seek independent legal advice. The Ofcom legal team was essentially the same team now as had been at designation; however the internal legal team dealing with scope appeals was different.
- ATVOD was not subject to the Freedom of Information Act, as it had not been listed in the Act. Ofcom did not regard the Designation as conferring on ATVOD any obligation to comply with Freedom of Information Act requests.
- Ofcom were unable to specify when it would reach a decision on the scope appeals but it wished to do so as soon as possible.
- Ofcom were grateful to those who attended Forum meetings, were supportive of its role and were happy to be contacted directly by Forum members.

10. Any other business

There were no items of other business raised.

11. Private Member session – General discussion of VoD regulation

A meeting between the service providers present was held and a separate minute recorded – annex 3.

Annex 1 – List of Members and Attendees at the ATVOD Industry Forum on 19 July 2011

Name of Service Provider/Organisation	Name
AETN UK	Cat Rogers
BBC Worldwide Ltd	Adrian Dicker
BiBC Ltd	Paul Coster
Broadcasting (Gaia) Ltd/ Sapphire Media International BV (17)	Emma Louise Bennett
Broadcasting (Gaia) Ltd	Mike Sharp
Canis Media Group (Ocean Finance & Mortgages Ltd)	Helena Brewer
CBS Chellozone UK Channels Partnership/ Zone Kids Ltd/ Zonemedia Broadcasting Ltd	Guy Wheeler
Channel 4	Mark Lambert
Channel 5 Broadcasting Ltd	Martin Stott
Columbia Pictures Corporation Ltd	Chris Roudette
Discovery Communications Europe Ltd	Kerry Neilson
IP Vision UK TV	Steve Middleton
Microsoft Ltd	Janet Greco
Nickelodeon UK Ltd	Alex Slade
Northern Visions	Daniel Cass
Saffron Digital Ltd - On behalf of T-Mobile International UK	Jackie McMahon
Sapphire Media International BV (17)	Tim Curtis
SCI FI Channel Europe LLC (NBC Universal)/ Universal Pictures Subscription Television Ltd	Gidon Freeman
Strictly Broadband	Jerry Barnett
STV Central Ltd	Helen Alexander
Top Up TV Europe Ltd	James Marson
Turner Broadcasting System Europe Ltd ("Turner")	David Coughtrie
UTV Television	Michael Wilson
Virgin Media Ltd	Ronee Isaacson

In Attendance:

Name of Organisation	Name
ATVOD	Ian McBride
ATVOD	Nicola Ebdon
ATVOD	Pete Johnson
ATVOD	Ruth Evans
ATVOD	Julia Hornle
ATVOD	Nigel Walmsley
ATVOD	Cathy Taylor
COBA	Victoria Read
Ofcom	Trevor Barnes

Annex 3 – Industry Forum – Private Members session
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- ATVOD's proposal for Board recruitment was discussed at the private members session and a number of suggestions made for the best way to move forward. The options suggested were as follows:
 - Accept ATVOD's proposal as put forward at the meeting
 - Propose that the industry Board member should be appointed by ODPS holders only on an election basis and there should be no involvement of the Board Chair in the process.
 - Propose that there should be two industry members and one independent member on the recruitment panel. An independent assessor could be there to ensure a fair recruitment process but would not have a vote.
 - Propose that industry appoints its representative but ATVOD has a veto over the appointment. In relation to the appointment of the independent director, the situation is reversed.
 - Propose that there are 2 industry representatives on the panel for the appointment of the industry member but ATVOD also has a veto. In relation to the appointment of the independent director, the situation is reversed.
- A 'meet the industry Board members' suggestion was put forward as an idea for a regular slot at the industry forum meetings, possibly during the in camera section of the meeting. I think we should take this idea forward.