



THE ASSOCIATION FOR TELEVISION ON DEMAND LIMITED

Minutes of a meeting of the
Association for Television On Demand Limited (“ATVOD”)

Industry Forum

held at BT, 81 Newgate St, EC1A 7AJ
on Monday 7th March 2011, 2.00pm

Present:

Please refer to attached list – annex 1

In attendance:

ATVOD Board:

Ruth Evans – Chair

Ian McBride

Simon Milner

ATVOD Executive:

Pete Johnson – Chief Executive

Nicola Ebdon – Company Secretary (mins)

SCBG:

Victoria Read, Director

1. Welcome

The Chair of ATVOD welcomed all representatives of service providers to the meeting.

2. Satellite and Cable Broadcasters’ Group

The meeting heard that the Satellite and Cable Broadcasters’ Group (SCBG) had sent a letter to Ed Vaizey Minister for Culture, Communications and Creative Industries, DCMS on 4 March 2011. The Chair of ATVOD asked Victoria Read, Director of the SCBG to provide a summary of the content of the letter to those present who had not signed up to the letter. The meeting heard that the letter raised concerns on scope, multiple services, and the level of fees proposed in the Year Two Fees Consultation and that the SCBG hoped to discuss these concerns with Ed Vaizey and Ofcom. In a response to the issues raised the ATVOD Chair thanked the SCBG for a copy of the letter and advised the meeting that she would discuss these issues with Ed Vaizey later in the day. The meeting heard that ATVOD had no desire to impose any unnecessary or unwarranted burdens on the industry; instead they wanted to help ensure that the regulations

worked for the industry and agreed in general with the points made. Pete Johnson responded to a number of the issues raised in the letter outlining ATVOD's position.

In relation to the multiple services issue raised in the letter, ATVOD hoped that it could work with the Industry Forum to encourage a change in the Regulations which would allow a more proportionate approach in future.

3. Appointment of Chair

Following a poll to elect a Chair, the ATVOD Chair announced Kerry Neilson had been voted as Chair of the Industry Forum. The meeting heard that prior to the meeting both candidates had approached ATVOD to request that a position of Deputy Chair be created. ATVOD concurred that this would be a sensible approach and put this suggestion to the meeting. Those present agreed to create a role of Deputy Chair and that Helena Brewer (the other candidate) should be the Deputy Chair.

As Kerry Neilson had been unable to attend the meeting, it was agreed that Helena would Chair the remainder of the meeting.

4. Draft Industry Forum Terms of Reference

Those present gave their general agreement to the draft Terms of Reference, which had been circulated prior to the meeting, subject to the role of Deputy Chair being included and further consideration being given to the implications of the following paragraph:

“All Members should be in good standing with ATVOD and should not have direct company association with any provider of an ODPS whose breach record with ATVOD is such that their membership of the ATVOD Industry Forum would undermine its integrity. Such matters will be judged on their merits by the collective membership of the ATVOD Industry Forum and ATVOD.”

5. ATVOD Updates

ATVOD's Chief Executive gave a verbal update on progress with ATVOD's work since the last Forum meeting. Throughout the update questions were taken from the floor. The following points were noted:

- ATVOD had received 121 notifications. Two of which were subject to a formal review and three had been granted a concessionary rate. ATVOD was considering three further requests for a concessionary rate. Eight final determinations had been made, six of which were under appeal to Ofcom. Two of the appeals had been with Ofcom for some months and an answer was expected soon. In addition 30 services had been issued with a preliminary review, but ATVOD did not think that all would be within scope, based on past experience.
- ATVOD was undertaking 32 investigations in relation to multiple services notifications, of which:
 - 13 investigations were completed in full or in part. Of these, 8 had resulted in no additional notifications being required and 5 had resulted in a preliminary view that a

total 11 further notifications were required (of which 4 notifications had been received to date);

- 9 investigations were awaiting a decision by ATVOD which was due to be made in the next few weeks; and

- 10 were awaiting final information from the provider.

- ATVOD had followed the same process for all multiple service investigations and regretted the length of time it had taken to agree the basis for multiple services decision. The delay had been due to discussions between ATVOD and Ofcom over the criteria to be used to determine whether two versions of a service were 'substantially the same' which were longer than anticipated.
- Ofcom had completed a consultation on scope guidance in autumn 2009. It had been apparent from the first round of guidance that clarification of that guidance was required in various areas to assist both the regulator and the regulated.
- There was a rising trend in complaints to ATVOD, with 24 being received, three of which had been closed and 15 had been out of remit. No breaches had yet been recorded. There had been two full investigations conducted on a Swedish reality programme and Frankie Boyle's Tramadol Nights. These had been investigated by the ATVOD executive who had submitted a report to an ATVOD Board sub committee for decision. If ATVOD did record a breach a range of sanctions were available. There was no right of appeal to Ofcom, but appeals could be made to ATVOD for a review of the original determination.
- ATVOD had issued a request to service providers for information on European works, in relation to ATVOD's duty in this area. ATVOD had also invited some service providers to voluntarily provide information with regard to Access Services for those with disabilities relating to sight, hearing or both. ATVOD requested that all service providers who had received such a survey on access services to participate.
- ATVOD would be launching its new website and new name later in the month.

As a result of the discussion the Industry Forum agreed that it would ask Ofcom for its rationale behind proposing a high threshold as the basis for multiple services decisions. It was agreed that it would be helpful for future discussions to have Ofcom in attendance at Industry Forum meetings. The Forum asked ATVOD to invite relevant Ofcom colleagues to future Industry Forum meetings, once dates had been agreed.

6. Year Two Fees Consultation

The following points were noted from questions and discussion:

- The consultation would close on 1 April 2011 and a statement was expected to be published approximately six weeks later.
- The consultation contained concessionary rate proposals, which ATVOD had tried to include in the Year One consultation.
- The consultation had been drafted after ATVOD had considered all the options and removed the ones which it felt would not work in Year Two. The options finally put forward were considered capable of satisfying the statutory requirements given the level

of information available. ATVOD did not have a preferred option and acknowledged that there were pros and cons in each case.

- ATVOD had insufficient knowledge of service revenue as most notifications did not include revenue information; therefore it was difficult for ATVOD to construct a revenue based fees model. Forum Members were asked to let ATVOD know if they could suggest how to work out a fee system based on revenues for the service alone.
- ATVOD believed that there was not a perfect solution available at the moment, but hoped that the Industry Forum could help the industry agree on a common measure of e.g. revenue or usage/audience size which might be a viable and preferable option for future years. To help move the process forward for future years, ATVOD had, via the consultation, asked for information on revenue and audience size.
- The SCGB felt that the proposed fees were quite large for a large number of providers and had significant concerns.
- In relation to the effect of multiple services notifications and application of a fees cap, ATVOD urged those companies due to send information to ATVOD, to do so quickly so that the investigations could be completed. ATVOD believed that the outcome of the investigations might provide reassurance to some providers on the total level of fees to be paid.
- In response to a request for more information on ATVOD's proposed budget for 2011/12, it was noted that per annum the ATVOD Chair was paid £40,000, the Deputy Chair £15,000, and the Independent Board Members £10,000. The Non-Independent Board Members did not receive a salary and the full-time Chief Executive Officer was paid £100,000 per annum. ATVOD also employed a part time Company Secretary, a part time Policy and Investigations Manager, a full time Policy & Investigations Officer and a part time Personal Assistant to the CEO. The ATVOD Chair worked between one and two days a week. Salaries for the Board and Executive had been agreed following a comparison against Ofcom, and were generally considered to be below market rate.
- ATVOD was open to consideration of proposals to improve the regulations if there was a clear reason to do and would be happy to take part in a debate to make the regulations better.
- The UK Government had consulted on proposals for the regulation of video on demand in the UK, which had resulted in a preference for a co regulatory approach. This approach was therefore different to how the rest of Europe now regulated video on demand.
- The regulations did not make any distinction between pay per view content and other content, nor any content which is regulated twice, all of which fall under the regulations for video on demand.

Following the discussion it was agreed that the Forum should start considering what metrics it would like to be included in the Year Three Fees Consultation and therefore would discuss this issue at the next Forum meeting, using the information on revenue and audience size gathered by the Year Two Fees Consultation.

7. Consideration of whether an additional meeting is required

The meeting noted that the next meeting had been proposed as 22 June 2011. Members felt that it would be advisable to hold a meeting to discuss the proposed statement resulting from the Year Two Fees consultation, and therefore requested that ATVOD arrange a meeting in May, with quarterly meetings thereafter. A request was made to avoid December meetings if possible.

8. Any other business

There were no items of other business.

9. Member only Session

A meeting between the service providers present was held.

Annex 1 – Members who signed in as present for the meeting.

(There were a number of entrances to the room, so some Members who attended the meeting may not be included on this list, if they didn't sign into the meeting once in the room). If this is the case and you want your attendance recorded please let the ATVOD Company Secretary know).

Name	Name of Service Provider
Adam Kinsley	British Sky Broadcasting Ltd ("Sky")
Alex Kann	Community Channel
Alex Slade	Nickelodeon UK Ltd
Cat Rogers	AETN UK
Daniel Cass	Northern Visions
David Faulkner	Saffron Digital Ltd – On behalf of T-Mobile International UK
David Holmans	MTV Networks Europe
Emma Louise Bennett	Broadcasting (Gaia) Ltd/Sapphire Media International BV (17)
Ewan Watson	Warner Bros. International Branded Services a division of WB TV Distribution Inc.
Gidon Freeman	SCI FI Channel Europe LLC/Universal Pictures Subscription Television Ltd
Graeme Leversedge	SCI FI Channel Europe LLC/Universal Pictures Subscription Television Ltd
Guy Wheeler	CBS Chellozone UK Channels Partnership/Zone Kids Ltd/Zonemedia Broadcasting Ltd
Hayley Smith	Channel 4
Helen Alexander	STV Central Ltd
Helena Brewer	Ocean Finance & Mortgages Ltd
Jade Allen	BBC Worldwide Ltd
James Marson	Top Up TV Europe Ltd
Jason Bandy	Education Digital Management Ltd (Teachers TV)
Julia Smetana	VIASAT Broadcasting UK Ltd
Lee Barnett	TRAVEL CHANNEL INTERNATIONAL LTD
Louis Bariuan	ABS-CBN Europe Ltd
Mark Lambert	Channel 4
Martin Stott	Channel 5 Broadcasting Ltd
Nazneen Hassam	FilmFlex Movies Ltd
Paul Valentin	Universal Pictures Subscription Television Ltd
Ricki Paraskevas	Discovery Communications Europe Ltd
Ronee Isaacson	Virgin Media Ltd
Ronee Isaacson	Virgin Media Ltd
Russell Johnstone	Top Up TV Europe Ltd
Zoe Jones	VIASAT Broadcasting UK Ltd