

The logo for The Authority for Television On Demand (ATVOD) features the letters 'ATVOD' in a bold, white, sans-serif font, centered within a solid black rectangular background.

ATVOD

THE AUTHORITY FOR TELEVISION **ON DEMAND**

Corporate Plan 2011-2012

15 September 2011

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Chair's Foreword

I am pleased to introduce ATVOD's first corporate plan. As well as ensuring that we meet our regulatory responsibilities we have spent the first year setting out our governance arrangements and establishing ourselves as the UK's co-regulatory authority for editorial content in On Demand Programme Services ("ODPS"). As part of this process, a new Board and Executive have been recruited and policy and procedures established for all aspects of our work. Details of who we are and how we operate are detailed in this plan.

This plan sets out the key areas of our work during the period to end March 2012. This will be carried out in partnership with the industry and Ofcom. As a co-Regulator, we are committed to establishing constructive relations with the industry, whose active co-operation and support is vital for any co-regulatory arrangement. To this end we have established an Industry Forum, open to all ODPS providers and we look forward to the dialogue and work that will follow from this.

As a new co-Regulator our top priority is to work with all our key stakeholders to ensure that consumers of video on demand services enjoy the protection afforded to them in the Communications Act. We believe that by doing this we shall gain the confidence of consumers and encourage continued investment and innovation in the industry. We are required to ensure that providers notify their services to us so that we can ensure that all video on demand services comply with their statutory obligations. And we are required to encourage providers to ensure that their services are progressively made more accessible to people with disabilities affecting their sight or hearing or both and to promote, where practicable and by appropriate means, production of and access to European works.

Our mission is to co-regulate on demand programme services to ensure the protection of consumers of video on demand services. With the governance arrangements of our start up year now firmly embedded, we look forward to working with our stakeholders to meet the objectives set out in this plan in this our second year to fulfil our mission.

Ruth Evans
Chair, ATVOD

1. About ATVOD

1.1 Our Designation and Powers

The Authority for Television On Demand (ATVOD) was designated by Ofcom on 18 March 2010 as the independent co-Regulator for the editorial content of UK video on demand services that fall within the statutory definition of ODPS.

Our duties and powers derive from the Communications Act 2003, as amended by the Audiovisual Media Services Regulations 2009¹ and the Audiovisual Media Services Regulations 2010² which came into force on 19 December 2009 and 18 March 2010 respectively. The Act confers functions on Ofcom for the regulation of ODPS, and gives Ofcom power to delegate certain functions to an appropriate regulatory authority.

Public consultation showed widespread support for an independent co-regulatory regime working in partnership with industry to regulate ODPS. As a result, Ofcom delegated certain of its functions and powers in the regulation of ODPS to ATVOD by means of a formal designation³.

To manage our new responsibilities we restructured from a self-regulatory entity to a co-regulatory entity to ensure we are sufficiently independent from the industry's commercial interests and to ensure we can work with industry to protect consumers of video on demand services through the effective co-regulation of ODPS.

ATVOD has been designated a number of Powers³ which enable it to:

- prepare and publish procedures for receiving notifications from providers of an ODPS;
- decide what constitutes an ODPS and who the provider of that service is;
- decide what constitutes a 'programme included in an ODPS';
- prepare and publish Rules to ensure service providers comply with the relevant requirements of the Act;
- prepare and publish guidance to accompany the Rules;
- demand information from service providers;
- determine if service providers are in contravention of the Act and issue relevant enforcement notifications which include remedial action;
- enforce compliance with an enforcement notification in civil proceedings (save where Ofcom decides to take enforcement action);
- carry out, commission or support (financially or otherwise) research; and
- use any recording, script or transcript provided to us in connection with the performance of any of our Designated Functions.

¹ <http://www.legislation.gov.uk/ukxi/2009/2979/contents/made>

² <http://www.legislation.gov.uk/ukxi/2010/419/contents/made>

³ <http://www.atvod.co.uk/uploads/files/designation1803101.pdf>

1.2 Our Purpose and Functions

We were established to co-regulate ODPS to ensure the protection of consumers of video on demand services. We aim to have a co-operative and supportive relationship with the industry. As well as having four Board members from industry, we have established an Industry Forum, which meets quarterly and has a Chair and Deputy Chair elected from its membership. We hope our Industry Forum will facilitate communication between us and the industry. This relationship will ensure regulation is well informed through gaining an industry perspective, tapping into industry expertise and gaining input to draft consultations.

As well as working with industry to protect consumers of video on demand services we want the consumers' voice to be at the heart of co-regulation. To this end we have a majority of Independent Board Members, including the Chair, who have a particular responsibility to represent the interests of consumers. Board decisions are not quorate unless Independent Board Members are in a majority. We are committed to engaging with those who represent video on demand users with disabilities relating to hearing and sight. We have worked with disability groups to develop a plan to encourage service providers to make their services progressively more accessible.

Ofcom has designated us to carry out a number of functions³:

Notifications and fees

Services which fall within the statutory definition of ODPS have to notify with us, so that we can ensure they comply with their statutory obligations in relation to the 'editorial content' to which they provide access. We have developed guidance on who needs to notify⁴ which is published on our website.

We have a duty to determine whether ODPS providers have complied with the obligation to notify and therefore undertake investigations to determine whether services who have not notified fall within the statutory definition of ODPS. Before reaching a determination, we inform the ODPS provider of our preliminary view and invite representations, which are considered by our Board before a final decision is taken. ODPS providers can appeal to Ofcom. We publish details of scope determinations on our website along with information on appeals, notifications or sanctions that have taken place subsequent to the determination.

In case of failure to notify, or pay the required fee, we may issue an Enforcement Notice. We may secure compliance with an Enforcement Notice through civil proceedings or, as an alternative; we may refer the ODPS provider to Ofcom to consider the imposition of a financial penalty or suspension of the service.

Complaints

We deal with all complaints in accordance with published procedures and key performance indicators that have been approved by Ofcom⁵. The KPI's state that:

- 80% of straightforward cases will be closed within 30 working days; and
- 80% of complex cases will be closed within 60 working days.

⁴ http://www.atvod.co.uk/uploads/files/Guidance_on_who_needs_to_notify_Ed3.1_Mar_2011.pdf

⁵ http://www.atvod.co.uk/uploads/files/ATVOD_Complaints_Process_Ed1.1_Mar_2011.pdf

We have established an online complaint form to make it simple and straightforward for consumers to complain about VOD services that may be in breach of the statutory Rules. The online form is the most efficient way of ensuring that the necessary information is provided and that the complaint is directed to the correct recipient as quickly as possible.

We conduct a full investigation if a complaint is within its remit and has not been dealt with satisfactorily by the service provider. We decide on complaints concerning editorial content on VOD services and information which must be supplied to users of VOD services in accordance with the legislative requirements. Editorial matters falling within the statutory requirements, as reflected in the Rules, comprise:

- harmful material likely to incite hatred based on race, sex, religion or nationality hatred;
- protection of under 18s from content likely to seriously impair their physical, mental or moral development;
- sponsorship;
- product placement; and
- information to be provided to users of VOD services.

Accessibility

We are required to encourage ODPS providers to ensure that their services are progressively made more accessible to people with disabilities affecting their sight or hearing or both. Our current Access Services Plan⁶ for encouraging the provision of access services is published on our website along with interim guidance⁷ for service providers.

ODPS providers are also encouraged to provide ATVOD with relevant details of the access services currently provided on their ODPS by completing and returning a questionnaire published on our website. The information provided will be published to enable stakeholders, including people with relevant disabilities, to identify which access services are offered on which services. We intend to publish the results of the survey before the end of 2011.

European Works

We also encourage ODPS providers to promote, where practicable and by appropriate means, production of and access to European works. Our current European Works Plan⁸ for encouraging service providers is published on our website.

In carrying out these functions and exercising our powers we comply with a number of Obligations and Conditions specified by Ofcom³.

⁶ http://www.atvod.co.uk/uploads/files/Access_Services_Plan_Mar_2011.pdf

⁷ http://www.atvod.co.uk/uploads/files/Access_services_Interim_guidance_for_service_providers.pdf

⁸ http://www.atvod.co.uk/uploads/files/European_Works_Plan_Mar_2011.pdf

1.3 Our Mission and Values

Our mission is to co-regulate on demand programme services to ensure the protection of consumers of video on demand services.

We have seven core values which provide a foundation for our business plans and how we engage with stakeholders and consumers. They are reflected in the way in which we are run.

Independence

Our decisions will be independent and evidence based. Consumers must be confident that we will provide independent co-regulation which is in their best interests.

Transparency

Our decisions will be clear and reasoned, and our processes open to reasonable scrutiny.

Accountability

Each year we will account for and publish our progress against our business plan and measure our success.

Proportionality

We will act accordingly on a basis proportionate to the size of the problem, bearing in mind the timeliness, quality and cost of resolution.

Consistency

We will try to be consistent in our decisions, assessing each case on the basis of the rigorous application of agreed criteria to the facts of the particular case.

Targeted

We will act in a light touch way and not intervene, unless necessary to ensure the protection of consumers.

Fairness

We will act in an impartial manner in performing our duties.

1.4 Our Structure and Governance

We are led by an independent Chair and have a Board comprising five independent and four industry members⁹. Our Executive is small and comprises a full-time Chief Executive Officer, a part-time Company Secretary, a part-time Policy and Investigations Manager, a full-time Policy & Investigations Officer and a part-time Personal Assistant and Office Manager.

Each year there are nine Board meetings, one strategy day and numerous other committee and Board/Executive meetings, where judgements are required and decisions made. Minutes of Board meetings are published on our website once approved. All Board Members and Executive staff complete an annual appraisal and objective setting exercise to ensure that our goals and objectives are reflected throughout the company.

The Board has delegated some of its duties to Committees, which meet on an ad-hoc basis as required:

- Scope – to discuss and agree borderline and disputed scope decisions;
- Complaints – to consider complaints where an initial assessment has determined that the complaint does raise potential issues under the statutory requirements; and
- Audit and Finance – to consider in detail the financial affairs of ATVOD.

We have published a Code of Conduct¹⁰ with which Board Members must comply. They must act in good faith and in the best interests of ATVOD at all times. They are required to disclose details of any public and charitable appointments, directorships, related employments, and relevant financial interests. All shareholdings of a material size in any regulated company (including those of partners and dependent children) are disclosed. These interests are recorded in the register of interests¹¹, which is published on our website.

⁹ <http://www.atvod.co.uk/about-atvod/atvod-board>

¹⁰ http://www.atvod.co.uk/uploads/files/ATVOD_Code_of_Conduct.pdf

¹¹ http://www.atvod.co.uk/uploads/files/ATVOD_Register_of_Interests.pdf

1.5 How we delivered in Year One

During our first year we concentrated on delivering our designated functions, in partnership with the Industry, Ofcom and other stakeholders where required.

In summary we:

- published Guidance on who needs to notify (which was revised later in the year), Guidance on how to notify, a Notification Form and details of notified services in a Directory format;
- established procedures for investigating potential un-notified ODPS's and made assessments of 1011 services;
- published statutory Rules with which ODPS providers falling within regulatory scope must comply and accompanying Guidance as an aid to interpretation;
- developed a procedure for handling complaints that an ODPS provider may be in breach of the requirements of the Act and a new online complaints facility to assist the submission of complaints;
- submitted a plan to Ofcom setting out how we intended to fulfil our duty to encourage service providers to ensure their services are progressively made more accessible to people with disabilities affecting their sight or hearing or both. In accordance with this plan we met representatives from a range of disability advocacy groups in January 2011, completed a preliminary survey of leading service providers and platforms, began a survey of all service providers, and published a Consultation on Best Practice Guidelines for access services on video on demand services;
- submitted a plan to Ofcom setting out how we intended to fulfil our duty to ensure that service providers promote, where practicable and by appropriate means, production of and access to European works. We published guidance to service providers, setting out our duties in this area and the definition of a European Work. We asked service providers to provide us with information on the amount of European Works their services contain;
- we consulted on the issue of regulatory fees for Year One and later whether a concessionary rate might be introduced for certain services. We sought and were given discretion to apply a concessionary rate in exceptional circumstances. With regard to regulatory fees for Year Two, we held a pre-consultation meeting with stakeholders in December 2010 and published a Consultation in February 2011; and
- we established an Industry Forum to ensure regulation is well informed through gaining an industry perspective, tapping into industry expertise and gaining input to draft consultations.

2. Operating Context

We operate in a complex legislative environment which includes the Communications Act 2003, as amended by the Audiovisual Media Services Regulations 2009¹² and the Audiovisual Media Services Regulations 2010¹³. The Government has proposed a thorough review of media and communications over the next three years that may lead to a new Communications Act.

Our industry, which is still in the early stages of development, operates within an environment which includes a fast pace of technological change, competitive forces and changing audience behaviour. Additionally the whole communications industry is in transition towards greater integration of technology and content, with new domestic and mobile devices emerging all the time.

In the environment within which we operate there are a range of consumer issues which include the possibility that consumers of video on demand may be confused or misled by the fast pace of technological change and availability of on demand content on converged platforms.

Through our Business Plan we aim to ensure that we are well placed to take account of this operating context in the fulfilment of our duties. We keep abreast of technological and other developments and consider how new and changing consumer issues affect our work.

3. KPI's and Evaluation

We are in the process of developing key performance indicators against which we will measure our success. Our KPI's include:

- 80% of notifications investigations to reach a final determination within 60 working days of issuing a preliminary view (unless an ODPS requests an extension to submit representations).

This is in addition to our complaints KPI's, which were agreed with Ofcom, and which we already monitor:

- 80% of straightforward complaints will be closed within 30 working days; and
- 80% of complex complaints will be closed within 60 working days.

We are also developing systems for evaluating progress against our Business Plan, which we hope to finalise in 2011.

¹² <http://www.legislation.gov.uk/uksi/2009/2979/contents/made>

¹³ <http://www.legislation.gov.uk/uksi/2010/419/contents/made>

4. Risk Management

We face a number of uncertainties which could impact our continued effectiveness as a co-Regulator. We have developed a risk management plan and controls to protect and enhance our effectiveness. We regularly identify, analyse, respond to and control our risks, as documented on our risk register. We will continue to monitor the uncertainties we face and develop responses as required.

5. Our Finances

We are committed to performing our designated functions in a cost effective manner. Our designated functions cover a range of activities of varying complexity. Our estimate of the likely costs of performing the designated functions in Year Two represents the minimum necessary to ensure that the designated functions can be performed effectively. We have, with one exception, frozen remuneration levels for Year Two and will keep our costs under constant review. We have included a significant provision against the prospect of legal challenge in Year Two which we regard as essential given the complexity and controversy surrounding issues of scope in particular. We have arranged an overdraft facility to deal with in year cash flow issues.

Our budget to carry out the relevant functions during 2011/12 is as follows:

Ofcom re-charges	£20,000
Remuneration for staff & Independent Board Members	£306,120
Rent and office running costs	£28,700
Travel and other expenses (Executive and Board)	£7,000
Legal fees	£40,000
Other professional fees and recruitment costs	£24,000
Insurance and bank charges	£7,000
Independent complaints adjudicator	£1,000
Strategic planning	£2,000
Recruitment	£2,000
IT and Website support	£4,800
Contingency	£20,000
<u>Total</u>	<u>£462,620</u>

6. Business Plan 2011/2012

We have agreed a work plan for 2011/12. This builds on our key functions, ensuring that we carry out the Business Plan in a way which reflects our values. With each objective we set out what the Board intends to achieve in terms of key deliverables.

6.1. Statutory Functions

We aim to fulfil our statutory remit to the best of our ability as our resources allow

- Conduct a survey of service providers to ascertain the state of provision of access services in ODPS, engage with other relevant stakeholders and use information gathered to encourage take up of access services. We aim to conduct a public consultation, if appropriate, and update Guidance to Service Providers.
- Conduct a survey of service providers to ascertain the extent to which the production of and access to European works are promoted within ODPS currently, the barriers to such promotion (if any), and what can be done to reduce them; and use the survey results to develop a way forward in consultation with industry.
- Report to Ofcom on the exercise of our designated functions for the period 1 Jan to 31 Dec 2011, by 31 March 2012.

6.2. Stakeholder Communication

We aim to engage with all our stakeholders to understand the issues and concerns of stakeholders and ensure an integrated approach to regulation

- Work with Industry via the Industry Forum to discuss concerns and establish open communication, develop a Memorandum of Understanding, establish a funding solution for year three onwards and identify other areas for discussion.
- Develop a means of engaging with those who represent the interests of consumers in order to understand the consumer experience of VOD, including engagement with disability groups, consumer orgs, academics, regulators.
- Work to improve communications with other key stakeholders e.g. IWF, UKCCIS, some outside UK Engagement and the wider public.
- Establish and develop dialogue with Government and Parliament.
- Work with Ofcom.
- Work with other regulators as required and develop a Memorandum of Understanding with the ASA, PCC and the BBC Trust.
- Develop an effective Communications Strategy.

6.3. Policy Development and Research

We aim to undertake appropriate policy development to ensure best practice and relevance in the industry

- Evaluate scope guidance as necessary and in consultation with the industry in light of the experience of Year One and the outcome of any appeals.
- Review our complaints procedures to ensure that complaints can be submitted and processed fairly and efficiently.
- Review the implementation of AVMS Directive in other EU states.
- Review guidance on sponsorship and product placement.
- Develop research opportunities to increase knowledge of current issues, if resources allow.

6.4. Public Policy

We aim to engage in public policy debate to ensure that we are aware of current issues and able to actively participate to ensure the best outcome for consumers and industry

- Engage in internet child protection/R18 public policy debate and develop our policy proposition.
- Contribute to wider public debate on content regulation.
- Keep up-to-date with relevant market developments.
- Develop opportunities for conferences/seminars, if resources allow.
- Respond to Government on the draft Communications Bill.

6.5. Internal Governance and Financial security

We aim to adopt principles of best regulatory practice to ensure good governance in all our decisions and to ensure our financial security

- Adopt new Articles.
- Evaluate our governance policies to ensure appropriate best practice.
- Develop an annual Corporate Plan and a three year Business Plan for 2012-2015.
- Produce an Annual Report.
- Recruit a replacement Industry Board Member.
- Work with service providers to develop a long term fee structure based on an agreed measure of scale.
- Complete Consultation on year three fees with Ofcom and thereby establish fees at a level to meet the anticipated budget.
- Ensure effective arrangements are in place for Audit and Risk Control.
- Ensure thorough oversight of finances through regular meetings of the Audit and Finance Committee.