

Review of the mandatory daytime protection rules in the Ofcom Broadcasting Code

Response from the Commercial Broadcasters Association to Ofcom

May 2018



A VOICE FOR COMMERCIAL BROADCASTERS IN THE UK

Executive Summary

1. The Commercial Broadcasters Association (COBA) welcomes Ofcom's proposal to extend mandatory daytime protections. Media consumption is changing rapidly. Viewers are increasingly able to access post watershed content during the daytime via on-demand services and time-shifted devices such as PVRs. Many of these already use protection systems such as PINs and current restrictions on linear services, other than premium film channels, are increasingly anachronistic – as much for audiences as for industry.
2. Extending mandatory daytime protection would enable many COBA members to offer linear audiences significantly greater choice in the type of content they have access to during the day. We detail how various broadcasters would approach using mandatory daytime protection in this submission, including the level of potential uplift in audiences that they expect and some of the audience groups that might benefit.
3. It is crucial to bear in mind that mandatory daytime protections are already established in linear television, having been in use for premium linear film channels since the rules were introduced in 2004. They have been working perfectly well on these channels for many years. The technology to provide mandatory protections is robust, as is the surrounding support system, such as processes for viewers to change their PIN numbers online or via apps.
4. The proven success of daytime protection mechanisms in the linear world, combined with their increasing familiarity to audiences due to their prevalence in the on-demand environment, makes it in our view timely to extend their usage to other linear channels and genres. In this sense, Ofcom's proposal represents a logical next step, a natural progression rather than a dramatic shift.
5. At its heart, the 9pm watershed is about distinguishing between content that is suitable or unsuitable for younger audiences. Mandatory daytime protection also helps audiences make that distinction, in a way that is particularly relevant in the digital age. Far from undermining the 9pm watershed, mandatory daytime protection provides a “digital watershed” – complementing the 9pm watershed and reinforcing the principle behind it that some content is not suitable for children.

Introduction

1. The Commercial Broadcasters Association (COBA) is the industry body for multichannel broadcasters in the digital, cable and satellite television sector, and their on-demand services. COBA members operate a wide variety of channels, including news, factual, children's, music, arts, entertainment, sports and comedy. Their content is available on free-to-air and pay-TV platforms, as well as on-demand.
2. COBA members are arguably the fastest growing part of the UK television industry, and are increasing their investment in jobs, UK content and infrastructure. They make this investment without public support, direct or indirect.
 - Scale: In the last decade, the sector has increased its turnover by 30% to more than £5 billion a year. This is rapidly approaching half of the UK broadcasting sector's total annual turnover, and has helped establish the UK as a leading global television hub.¹
 - Employment: As part of this growth, the multichannel sector has doubled direct employment over the last decade.²
 - UK production: In addition, the sector has increased investment in UK television content to a record £725m per annum, up nearly 50% on 2009 levels.³
3. For further information please contact Adam Minns, COBA's Executive Director, at ✕

¹ Ofcom International Broadcasting Market Report 2013

² Skillset, Television Sector – Labour Market Intelligence Profile

³ COBA 2014 Census, Oliver & Ohlbaum Associates for COBA

Response

Question 1: Would extending mandatory daytime protection have an adverse impact on the 9pm watershed? Could the change erode public confidence in the 9pm watershed?

- 1.1 COBA's view is that extending mandatory daytime protection would complement the 9pm watershed and strengthen the principle that underpins it. At its heart, the watershed is about distinguishing between content that is suitable or unsuitable for younger audiences. Mandatory daytime protection also helps audiences make that distinction, in a way that is relevant in the digital age when audiences have more choice than ever before over when they watch content. In essence, mandatory daytime protection is a "digital watershed", and as such reinforces the principle behind the watershed that some content is not suitable for children.
- 1.2 If mandatory daytime protection is extended, a number of COBA members expect to use PIN controls to provide increased choice to viewers. However, broadcasters are unlikely to use mandatory protection during the day on a widespread basis, both because scheduling such content may not fit with their brands and because they may not wish to put a PIN between audiences and their content. While offering an important degree of flexibility for broadcasters and increased choice for audiences, PIN usage will remain an exception rather than the rule. Even those broadcasters who see immediate potential for using daytime PIN expect to carefully develop such offerings on a step-by-step basis to ensure that viewers are comfortable. As such, in our view, it will not undermine the watershed in any way.
- 1.3 Finally, it is important to bear in mind that viewers are already using protection mechanisms such as PIN to access post-watershed content during the day on premium film channels and via on-demand services. The current proposal is an extension of the current system, not something wholly new, and the availability to date of post-watershed content during the day has not reduced viewers' confidence in the watershed.
- 1.4 We cannot see how permitting what is expected to be a modest amount of additional content to be available using a mandatory daytime protection will have any material effect on confidence in the watershed, other than to complement it and reinforce the principle behind it that some content is suitable for children and some is not.

Question 2: Would extending mandatory daytime protection increase the risk of children viewing post watershed content?

- 2.1 Any mandatory daytime protection regime must continue to ensure that children are robustly protected. PIN protection systems are already widely used, understood and robust across a range of services and platforms. They are already used by Sky, BT, BBC iPlayer and Virgin, for both linear and on-demand content. To address any concerns that children might obtain parents’ pin numbers, technology exists to issue regular reminders to parents to update their PIN numbers. Sky already allows viewers to change their PIN online and via an app.
- 2.2 Furthermore, while the watershed remains an important way of protecting audiences, it is not perfect, as recent complaints over high profile programmes demonstrate. In comparison, PIN protection might actually offer more effective protection, its very presence providing audiences with, in effect, a clear warning that content is “post watershed”.
- 2.3 In practice, however, we expect channels using mandatory daytime protections to be those who are firmly targeted at an adult audience. AETN (A+E Television Networks), for example, is actively considering using mandatory daytime protections on its Crime + Investigation and History channels. Examples of such content could include The Jail: 60 Days In and Vikings, in their post watershed versions.
- 2.4 As illustrated in the table below, Crime + Investigation’s children’s audience is negligible, averaging at just 2.2% of the total audience during the daytime. Furthermore, there are no children in nearly two thirds (65%) of the homes where Crime + Investigation is watched. History’s children’s audience is higher at 4.8%, but there are no children in over two thirds (71%) of homes where it is watched.

Figure 1: % Homes with no kids

Channel	% Homes with no kids	
HISTORY	71	
CI	65.2	

Figure 2: % of all viewing by Kids (4-15) in daytime (0800-1859):

Channel	% viewing by Kids (0800-1859)
HISTORY	4.8%
CI	2.2%

Source: AETN, BARB data

Question 3: How effective are mandatory PINs currently in protecting children? As part of this response we welcome views on the effectiveness of the protection offered for younger and older children.

- 3.1 As mentioned in response to Question 2, mandatory protection systems are already widely used, understood and robust across a range of services and platforms, as are related support services such as processes for changing a PIN. It is also important to bear in mind that the watershed it is not perfect, as we have noted, and that PIN protection might offer more effective protection.

Question 4: What more could be done to bolster the effectiveness of PINs?

- 4.1 Channels may want to include information about programme contents in the EPG or on-screen to help viewers understand why a PIN is required. In addition, as we have noted previously, technology exists to issue regular reminders to parents to change their PIN number, and to allow them to do so online or via an app.

Question 5: Do you agree with Ofcom's assessment of the technical limitations involved in implementing an extension to the mandatory daytime protection rules? Have there been any technical advancements in this area since the Call for Inputs in 2016?

- 5.1 As Ofcom states, channels are ultimately responsible for the mandatory PIN protections that are already in use, so they must be confident that a platform's technology can safely facilitate daytime protections, as well as provide appropriate metadata to that platform. Where there is a possible risk

presented by, for example, legacy STBs, a platform will need to weigh up the costs and logistical challenges of addressing that problem, compared to channel and audience demand for daytime protections. They may well decide that the costs outweigh the benefits, in which case mandatory daytime protections would simply not be available.

- 5.2 In terms of advancements since 2016, growth in the viewing of VoD content has in turn increased the use and understanding of PIN protections.

Question 6: As a broadcaster or platform provider, do you foresee any issues with the provision or collection of metadata required for an extension to the mandatory daytime protection rules?

6.1 Channels routinely supply platforms with metadata in a range of areas as part of their day-to-day business. Where a channel is not already supplying a platform with the appropriate metadata for mandatory daytime protection, then it will weigh up the burden of doing so with any potential benefits from increased audiences or increased audience choice. Ultimately, it will be the broadcaster's choice whether to use daytime protections or not.

6.2 In regard to certain platforms suggesting that supplying metadata will be a problem for smaller channels, they will weigh up the same cost/benefit factors as any other broadcaster. We note that some of the smaller channels in COBA's membership are actively considering using mandatory daytime protections and do not see the provision of metadata as a stumbling block.

Question 7: How would unconnected and legacy devices behave with the introduction of extended mandatory daytime protection rules? How do broadcasters and platform providers intend to ensure that there would be no risk of inadvertently broadcasting unsuitable content which is not secured by mandatory PIN protection?

7.1 On the Sky platform, mandatory daytime protections are already well established for premium film channels and our understanding is that unconnected and legacy devices do not present any problem.

7.2 In terms of first principles, though, we refer back to our responses to Questions 5 and 6. Channels and platforms will need to ensure that mandatory daytime protections can be provided safely. Where there is a risk that this is not the case, they will have to weigh up the costs and challenges of addressing those issues against the benefits for audiences. Ultimately, the

costs may outweigh the benefits, in which case channels will always retain the freedom not to use mandatory daytime protections.

Question 8: How would mandatory daytime protection interact with the live pause/ rewind/ fast forward functions on certain devices?

8.1 Again, mandatory daytime protection is already in use on the Sky platform for premium film channels and we are not aware of any problems in this area.

Question 9: What accessibility features are currently available, or could in future be implemented, to assist visually impaired people in accessing content restricted by a mandatory PIN?

9.1 Voiceover guidance as to the contents of the programme, as well as the need to enter a PIN.

Question 10: Are there any other technological, practical or cost issues involved which Ofcom should be aware of?

10.1 Not that we are aware of.

Question 11: Which particular types of pay TV subscribers could benefit from increased viewing choice, as a result of an extension in mandatory daytime protection? We welcome information and evidence from stakeholders about the size of such groups.

11.1 Potentially, a range of audiences might benefit from more choice as a result of extending mandatory daytime protections. The move would provide more flexibility for shift or night workers, as Ofcom mentions, and more widely for homes with low broadband speed who might face difficulties downloading on-demand content. It could potentially benefit older viewers, who are the people most likely not to have home internet access or smart TVs.⁴ and audiences outside London and the Southeast, where internet connectivity is generally lower than in comparison to the capital.⁵

⁴ The UK Communications Market 2017, Ofcom

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<https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/bulletins/internetaccesshouseholdsandindividuals/2017>

Question 12: To what extent could an extension of mandatory daytime protection result in any decreased choice for households with children? We welcome information and evidence from stakeholders.

- 12.1 In practice, we cannot envisage households with children having less choice. As we noted in response to Question 2, we expect channels using mandatory daytime protection to be those already targeted squarely at adult audiences. In these cases, more than two thirds of households where a channel is watched may not have children, and the average children's audience for such adult-targeted channels can be as low as 2.2% during the daytime.
- 12.2 More generally, it is firmly in the commercial interests of the broadcaster to ensure that it does not alienate its audience, and we would fully expect a channel to stop using mandatory daytime protections if it experienced viewer complaints or a drop in audiences as a result. If, for example, the limitations of a legacy STB requires an entire channel to be PIN restricted, rather than one programme, then it is likely that this will deter a broadcaster from using daytime protection on that channel. Ultimately, the broadcaster will retain the freedom to choose the best approach for their audience.

Question 13: As a broadcaster, would you be likely to use mandatory daytime protection to broadcast content on your channel(s)? What type of content would this be? Please provide an estimate of the number of hours of broadcast that would be likely to take place in a typical month.

- 13.1 A number of COBA members see immediate potential in using mandatory daytime protections on linear channels. Genres they are considering include high-end drama, sports, crime documentaries, film channels (other than premium services) and music videos, amongst others. This is primarily in order to better serve their audiences by offering them a greater range of content. There might also be cost saving incentives, as currently some shows are re-edited for a pre-watershed version, in addition to being shown in a different version after the watershed. Were these programmes shown behind a PIN during daytime, there would be no need to spend time and resources editing a daytime version.
- 13.2 Specifically, Sky Atlantic, Turner, and AETN (A+E Television Networks), amongst others, are actively exploring using mandatory daytime protection on linear television. Sky, for example, would like to consider showing more

drama during the day, and will provide more details in its own submission to Ofcom. Turner would look at daytime PIN protection for a number of its channels, such as Turner Classic Movies (TCM). This channel has historically not been able to show post-watershed films during the day, unlike premium film channels, and anticipates a potentially significant increase in viewing as a result of extending mandatory daytime protections. For reasons of commercial sensitivity, this is detailed in Annex 1 (confidential) of this submission.

- 13.3 As mentioned in response to Question 2, another broadcaster actively considering using mandatory daytime protections is AETN (A+E Television Networks), in particular for its Crime + Investigation and History channels. This could include such programmes as documentary Jail: 60 Days In and historical drama Vikings. For some programmes at least, AETN's approach would be to enable viewers to have the choice of watching content during the daytime that the broadcaster would not usually reversion for daytime viewing. This would be for programmes where a daytime version would require edits that would compromise the overall editorial integrity of the programme, and significantly reduce the audience's enjoyment.

Question 14: To what extent would there be any increase in choice for pay TV household groups as a result of the expansion of the mandatory daytime protection rules? We welcome information and evidence.

- 14.1 Please see our response to Question 11 for details.

Question 15: To what extent might households be likely to switch away from FTA platforms due to the provision of mandatory daytime protection on pay TV platforms only? Ofcom would welcome information and evidence.

- 15.1 In our view, it is wholly unlikely that households would switch away from FTA platforms due to the provision of mandatory daytime protection on other platforms. Viewers' choices as to which platform they use are driven by a multitude of factors, including exclusive content, cost and technical innovation. The extension of mandatory daytime protection might conceivably lead to a small, incremental increase in the attractiveness of a platform where it is in use, but it is in our view extremely unlikely that it would in itself be a material factor in a viewer switching platforms. This is not least because we do

not expect the use of mandatory daytime protections to be widespread, for reasons we have outlined in response to Question 1.

- 15.2 However, in a hypothetical scenario where the lack of mandatory daytime protection was driving audiences away from FTA, then FTA platforms would have to weigh up the cost of upgrading technology in order to offer mandatory daytime protection compared to the benefits. Our understanding is that any difficulties in providing mandatory daytime protections on FTA platforms are not insurmountable: the advent of Freeview's on-demand service Freeview Play opens up greater potential for providing PIN control systems, introducing, for example, a return path. If mandatory daytime protection had genuinely become a significant motivation for audiences, then this would make the cost of upgrading technology such as legacy STBs more justifiable.

Question 16: To what extent would channels which currently broadcast on FTA platforms be likely to stop broadcasting on those platforms, because mandatory daytime protection can only be used on pay TV platforms? Ofcom would welcome information and evidence.

- 16.1 Again, it is wholly unlikely that extending mandatory protection rules would incentivise a channel to stop broadcasting on a FTA platform. The FTA platforms are a gateway to substantial audiences, generating advertising revenues for a channel that would dwarf any economic advantages from mandatory daytime pin.
- 16.2 Rather than move away from FTA, in the event that the FTA platform cannot or does not offer mandatory daytime protections, then it is in our view far more likely that a channel would decide not to use mandatory daytime protection at all, on any platform. As there is typically only one feed which goes to all platforms, channels would have to apply for a separate licence in order to schedule the Freeview channel differently, which would be prohibitively expensive for many. Other channels will simply not wish to schedule different versions of the same channel brand in order to ensure listing information remains consistent.

Question 17: To what extent could platform competition be stimulated as a result of an extension to mandatory daytime protection? What effects could there be in the longer run on innovation and investment? Ofcom would welcome views and evidence.

- 17.1 There could be a modest increase in platform competition as a result of extending mandatory daytime protection. As discussed in response to Question 16, this competition might encourage the FTA platform to invest further in PIN technology, although we think it is unlikely households or channels would switch away from FTA solely because of mandatory daytime protection. As a principle, however, we believe it is crucial to the development of the UK's creative industries, and to driving competition and choice for viewers, that the market is permitted to innovate, and is not held back by any one particular platform or service.
- 17.2 However, where we see far more meaningful competition between platforms is in how extending the rules would enable linear platforms generally to respond to growing competition from on-demand platforms. We stress that many VoD services are already providing high profile content before the watershed, with or without mandatory protections, that broadcasters are currently unable to offer. Maintaining this imbalance will increasingly jar with audience expectations, as well as hamstringing linear channels.

Question 18: To what extent are viewers likely to switch to channels that offer content behind mandatory daytime protection?

- 18.1 Certain channels might benefit from an increase in viewers. However, it is important to remember that many of those channels that do not wish to use a mandatory daytime protection will be serving different audiences, such as family-oriented channels. By definition, a programme aimed at families is unlikely to be directly competing with a programme that would currently be scheduled after the watershed.

Question 19: Do you agree with our competition assessment above? Please give reasons and evidence where available for your answer.

- 19.1 The assessment does not touch on the increased competition between linear and on-demand that would be likely as a result of extending mandatory daytime protections. As we have noted in our response to Question 17, many VoD services are already providing high profile content before the watershed, with or without mandatory protections, that broadcasters are currently unable to offer.

Question 20: Are there any other relevant competition considerations that Ofcom has not taken into account? Please give details.

20.1 Not that we are aware of.

Question 21: Do you have any comments on the proposed revisions to the rules in Section One to allow for an extension to the mandatory daytime protection regime?

21.1 No.

Question 22: Should the revised rules allow up to BBFC 15-rated films to be shown at 20:00 on premium subscription film channels (as the current rules do)? Or would consistency across all channels be more beneficial?

22.1 We see no need for change on this point.

Question 23: What information should/ could be provided with programmes using a mandatory daytime protection to inform viewers on the suitability of the content?

23.1 Current practice for accessing on-demand content can include some form of explanation about why a PIN control is necessary, such as an on-screen warning that the programme contains violence or swearing. Such warnings might be included for a limited time while the system beds in and viewers become more accustomed to it.