

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

Response from Viacom International Media Networks

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Viacom International Media Networks (VIMN) welcomes the opportunity to submit this paper setting out its views on Ofcom's proposals to extend the application of mandatory daytime protection rules. We understand this will mean that, in addition to premium subscription and pay per view film channels, all other programmes which can currently only be shown after the 9pm watershed will be permitted to appear in schedules at any time of day provided that a mandatory PIN protection is in place.

VIMN understands that Ofcom's intention is to revise the Code so that it better "reflect[s] the evolving UK TV viewing landscape" and increases choice for daytime TV viewers. However, it is concerned the extension of mandatory daytime protection will weaken the watershed and distort competition between Pay TV channels on platforms which have the technological capability to implement PIN protection and Free to Air (FTA) channels which are not on platforms with these technical capabilities. Each of these points is addressed in more detail below.

If Ofcom remains committed to implementing the proposed policy, it should be on a limited, trial-basis only. Furthermore, there should be mandatory annual evaluations going forward, to monitor the impact on the efficacy of the watershed and competition between platforms.

Weakening of the watershed

The watershed restriction prevents broadcasters from showing material that is unsuitable for children before 21:00 and after 05:30 and is a well understood concept among the UK population. Ofcom confirms this: "*nine in ten (90%) adult viewers were aware that broadcasters must not show television programmes that are unsuitable for children until after a certain time in the evening..., with awareness of the watershed consistently high since 2005*"¹. It is a trusted child protection tool that is highly valued by audiences².

If broadcasters are permitted to screen post-watershed content before 9pm it is likely that a majority of viewers would be able to watch such programmes earlier than at present. The effect of this over time would be a diminution of the clarity of the watershed. It would no longer be so widely understood as the gold standard for protecting children from inappropriate content.

¹ UK audience attitudes towards broadcast media, page 24. Ofcom, 21 April 2016;

² Daytime PIN Research, page 6. Kantar Media, 20th February 2018

As Ofcom notes, it is the case that much post-watershed content is already available through broadcasters' catch-up services with PIN protection. There is however a crucial difference between how viewers decide what to watch on their catch-up services compared to on linear channels, and therefore what the public expects from these different services.

On the one hand viewers are presented with a choice of live channels from which they select the programme(s) they wish to watch with the understanding that they and their families will be automatically protected by the watershed. On the other, catch-up services require viewers actively to seek out their choice of programmes and to make their judgement using ratings and other content information provided alongside the available material. As 85% of viewing is still to live television and many homes do not have catch-up services, the linear schedule – with the watershed at its core – remains the norm.

VIMN also challenges the justification for the proposed rule change citing the Broadcast Code which already allows BBFC-rated 15 films to be shown on premium subscription film channels before the watershed provided there is mandatory PIN protection. Films are a distinct genre and, as the rule applies only to subscription film channels, only viewers who have actively chosen to subscribe to such channels are affected by it. There would be differences of degree and of kind if the regime were extended to all television: differences of degree, because of the sheer volume of programmes currently shown after the 9pm watershed that could then be made available before it; and differences of kind because, while film is a discrete genre, such a change could lead to the all television genres becoming available.

Impact on competition between pay and FTA broadcasters

The proposed extension of mandatory daytime protection will distort competition between Pay TV and FTA broadcasters. This is because Pay TV platforms have the technological capability to support mandatory PIN-protection, while Freeview does not. FTA channels, including PSBs, will be unable to take advantage of the new rules given that the majority of their viewing takes place through the Freeview platform whereas Pay TV channels will face no such issues.

Consequently, Pay TV channels will be able to schedule programmes before 9pm that some viewers will find more compelling than programmes on FTA channels that remain constrained by the watershed provisions of the Code. This will inevitably lead to some shift in viewing from FTA to Pay TV channels and negatively impact the advertising revenue of FTA Channels.

We disagree with Ofcom's observation that *"while certain channels may be worse off if they lose viewers and, potentially, advertising revenues, the changes in viewing and advertising revenue share would be the result of viewers acting on their improved viewing choices. As such, it would reflect the normal processes of competition"*³. Competition is in fact inhibited as FTA channels, especially on

³ Review of the mandatory daytime protection rules in the Ofcom Broadcasting Code, Page 38, Ofcom, 14 March 2018

Freeview with its base in the horizontal equipment market, would not be able to introduce such technology for all their viewers. So Pay TV channels available only in pay homes where PIN protection technology was available could avail themselves of the opportunity to schedule post watershed content early; while FTA channels broadcasting across all platforms could not.

Reduced revenue will in turn diminish FTA broadcaster's ability to invest in content. In the case of the commercial public service broadcasters such as Channel 5, which are obliged to be FTA, this would place additional pressures on their ability to satisfactorily fulfil their licence obligations. As Ofcom is aware, the main investors in UK content are PSB broadcasters.

As we have already stated, if Ofcom remains committed to implementing the proposed policy, it should be on a limited, trial-basis only. Furthermore, there should be mandatory annual evaluations going forward, to monitor the impact on the efficacy of the watershed and competition between platforms.
