



**OFCOM**

**Broadcasting Code Review:  
Commercial References in Radio  
Programming: Consultation**

An IPA response

**September 2010**

# **Consultation on revising the current Broadcasting Code**

The IPA welcomes this opportunity to submit views on the above.

## **About the IPA**

The Institute of Practitioners in Advertising (the “IPA”) is the trade association and professional institute for UK advertising agencies. Our 265 corporate members are primarily concerned with providing strategic advice on marketing communications, including creating and/or placing advertising. Based throughout the country, they are responsible for over 85%<sup>1</sup> of the UK’s advertising agency business and play a pivotal role in advising the nation’s companies on how they should deploy their total marketing communications spend of £42 billion<sup>2</sup>.

## **General comments**

The IPA has consistently supported the liberalisation of the Broadcasting Code in relation to commercial communications - and we applaud Ofcom’s decision to use the occasion of its consultation on the relaxation of the current product placement rules on TV to investigate liberalising commercial communications on radio - recognising that while the latter falls outside the scope of the AVMS Directive, it would be invidious for radio to labour under a regulatory regime which was more onerous than television.

As the trade body for agencies, we are vitally concerned in ensuring that there is a broad range of healthy, attractive and vibrant media into which our members can place their clients’ commercial messages – and it is in this context that we have approached this consultation.

Having said this, we believe the UK commercial radio industry not only plays a key role in our members’ media landscape but also in that of the public at large – a foil to the output of the BBC and a much loved alternative, whose commercial nature they recognise, accept and value.

We believe that by removing the current principle of separation between commercial communication and programming, the Regulator not only has the opportunity of freeing commercial radio from an unnecessary and inhibiting regulatory burden, but also of opening up a significant new revenue stream attracted by the creative opportunities this will afford - to the benefit of all parties : broadcasters with improved income and more colourful and involving output, advertisers with more attractive promotional vehicles for their sales messages - and listeners through stations which are more fun and more financially secure.

## **Specific questions**

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<sup>1</sup> Nielsen MMR 2005

<sup>2</sup> Bellwether Report 2010

Responding to the specific questions raised by Ofcom, our answers will inevitably be less in-depth than those of the broadcasters and perhaps some special interest groups - for whom the detail of regulation will be key.

Having said this, we do have a firm recommendation as to which of the Options put forward Ofcom should progress, as will become apparent below.

## **Option A: ‘Do nothing’ and maintain the principle of separation**

### **Question 1**

*a) Do you consider that Option A should be adopted by Ofcom?*

We do not believe that this option should be adopted

*b) If so, do you wish to comment on Option A?*

N/A

*c) If not, please explain why. You may wish to respond to this under Question 2 below under ‘Alternative approaches’.*

We concur with the radio industry’s observations that while this route may be felt to offer a high degree of “protection” for various consumer groups, it would not be acceptable to maintain the current level of restrictions on radio at a time when the rules for television were being liberalised.

Moreover, Ofcom’s own research reveals that that the current constraints are out of line with the expectations of listeners in whose eyes (ears) commercial radio has every right to be “commercial” in its output.

In these circumstances to maintain the status quo would be to discriminate against radio - imposing an unnecessary regulatory burden on a medium which already finds such restrictions severely constraining on its ability to generate much needed advertising and promotional revenues.

*d) Do you have any comments on the rule set for Option A above? If so, please refer to any individual rules by reference to their current rule numbers.*

No

*e) Do you agree with our assessment of the impact, including in relation to equality issues, of Option A on listeners, the radio industry and any other parties?*

We agree with Ofcom’s general assessment of the likely impact of this route.

*f) If not, please explain why, providing any evidence or data you have to support your answer.*

N/A

## **Alternative approaches**

### **Question 2**

*a) Do you wish to suggest an alternative approach in relation to the regulation of commercial communications on radio?*

No

*b) If so please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003, Article 10 of the European Convention on Human Rights and Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008).*

N/A

## **Option B: Maintains the principle of separation but provides a defined set of exemptions**

### **Question 3**

*a) Do you consider that Option B should be adopted by Ofcom?*

No

*b) If so, do you wish to comment on Option B? If you responded to the 2009 Code Consultation you may wish to refer Ofcom to your 2009 response.*

N/A

*c) If not, please explain why. Again, if you responded to the 2009 Code Consultation you may wish to refer Ofcom to your 2009 response.*

As indicated under our response to Option A, we believe the current principle of separation is both unnecessarily restrictive and unfairly constraining on commercial radio's ability to generate revenues through innovative and creative Sales and Promotional activity. It is also felt to be largely irrelevant by most listeners, who in research felt "of all the principles, (it) was .... the least important overall" (Essential Research p21)

Against such a backdrop, maintaining the principle of separation but providing a defined set of exemptions suffers the classic problems of compromise - neither offering the rigid (but unnecessary) “protection” of “total” separation nor enabling the radio industry fully to capitalise on the opportunities of a liberalised regime.

As such, the approach would appear discriminatory in a context where restrictions on product placement on television will have been removed.

The Ofcom Broadcasting Code Review (P90) stated that “listeners value a seamless flow of editorial content as far as possible” - maintaining a defined set of exemptions would not only appear to go against this - but would unnecessarily constrain the radio industry’s ability to innovate to the benefit of listeners and advertisers.

*d) Do you agree with our approach to the issue of not-for-profit funders? If you responded to the 2009 Code Consultation you may wish to refer Ofcom to your 2009 response on the issue of Public Information Programming.*

Given we do not believe that Option B should be adopted by Ofcom, we do not feel it relevant to express any views here.

*e) Do you have any comments on the rule set for Option B. If so, please refer to any individual rules by reference to the proposed rule numbers. You may also wish to outline any further exemptions (to the separation between commercial communications and spot ads) beyond those referred to in the rule set above.*

No

*f) Do you agree with our assessment of the impact, including in relation to equality issues, of Option B on listeners, the radio industry and any other parties?*

Yes

*g) If not, please explain why, providing any evidence or data you have to support your answer.*

N/A

### **Option C: Allows the integration of commercial communications and programming (except in relation to spot ads)**

#### **Question 4**

*a) Do you consider that Option C should be adopted by Ofcom?*

Yes

b) *If not, please explain why.*

No

c) *Do you agree with our approach to the issue of additional prohibitions or restrictions? Do you agree with our approach to a proposed review period? In particular do you wish to comment on the criteria which could govern a future review?*

We agree with Ofcom's view that the restrictions and prohibitions provided in the BCAP Code, together with the different nature of radio audiences, programming and consumption mean that it is not necessary to include additional consumer protections in commercial references on radio.

Likewise we concur with the approach to a proposed review period. This is clearly prudent given the nature of the proposed relaxation - even though we believe the move to be beneficial to all parties and the risks involved to be minimal.

We have no particular views regarding the criteria governing a future review – all the suggested factors appear sensible, although clearly, Ofcom will need to be careful to balance “complaints and issues” raised by self-appointed pressure groups with the more realistic attitude of the public at large, before embarking on any review on these bases.

d) *Do you agree with our proposed approach prohibiting commercial references in programming primarily aimed at children and the related guidance we propose.*

While we have sympathy with the prohibition of commercial references directly *within* children's programming for the reasons outlined, we believe that it would be overly prescriptive to prevent such messaging *around* programming such that it might result in the ending of “sponsorship” of content aimed at children.

e) *Do you agree with our proposed approach to consumer affairs; news and political and controversial matters; and religious programming?*

Yes, all of the proposals appear sensible and in line with industry thinking.

f) *Do you agree with our approach to the issue of not-for-profit funders? In particular do you wish to comment on the range of safeguards which would be in place?*

We believe the approach to be sound and the safeguards adequate. It is the intention of Ofcom to keep a watching brief on how the new set-up develops and to review its success after 2 years. This, we suggest would provide an opportunity to address any areas of concern.

*g) Do you agree with our approach to the issue of the selection or rotation of music? In particular do you wish to comment on our proposed approach in relation to the Public File guidelines; and our proposed approach to related Code Guidance, including the issue of appropriate intervals for, and content of, broadcast messages directing listeners to the Public File on stations' websites? You are also welcome to provide comments in relation to the selection or rotation of music in programming primarily aimed at children.*

Again, we believe this approach is sensible, with the suggested signalling ensuring listeners clearly understand when material has been the subject of a commercial arrangement.

*h) Do you have any comments on the rule set for Option C (above)? If so, please refer to any individual rules by reference to the proposed rule numbers set out above.*

No

*i) Do you have any comments on the discussion on guidance for Option C (above)?*

No

*j) Do you agree with our assessment of the impact, including in relation to equality issues, of Option C on listeners, the radio industry and any other parties?*

Yes

*k) If not, please explain why, providing any evidence or data you have to support your response.*

No

### **Option D: Allows the integration of commercial communications and programming (including in relation to spot ads)**

#### **Question 5**

*a) Do you consider that Option D should be adopted by Ofcom?*

No

*b) If not, please explain why.*

While, ultimately, the radio industry may wish to move in this direction - in terms of degree, we should be most content with Option C at present.

This, we believe, will provide major creative opportunities for broadcasters and advertisers to develop - not only attracting more revenue to stations and thereby helping improve the quality of the output overall, but also rendering promotional and sponsorship activity more colourful and involving for listeners.

Alongside this, the complete integration of all commercial communications including spots ads with programming, could, at this stage, be overly ambitious.

Having said this, once advertisers have had the opportunity to work under the new framework - and listeners and advertisers have become familiar with product placement on TV and integrated commercial references in radio - Option D would appear a logical progression - and to this end, we would suggest this extension be considered at the planned review of this area after 2 years in the marketplace.

*c) If so, do you wish to make any comments about our approach to Option D?*

N/A

*d) Do you agree with our assessment of the impact, including in relation to equality issues, of Option D on listeners, the radio industry and any other parties?*

Yes

*e) If not, please explain why, providing any evidence or data you have to support*

N/A