

## **Additional Comments**

TV You Ltd own and operates Sumo TV which is channel number 212 on the Sky EPG. Sumo Tv has been broadcasting for many years. We show a variety of general entertainment content. Psychic Content has been broadcast on Sumo for many years during which time no complaints have been made by either Ofcom or PPP. We currently broadcast from 5:30pm to 8:30pm.

Ofcom invites responses from stakeholders, particularly on the following questions:

### **Question 1:**

a) Do you agree with Ofcom's assessment of those stakeholders likely to be affected by changes to the regulatory framework for Adult Chat and Psychic PTV services?

We agree that in broad terms paragraph 6.67 identifies the relevant stakeholders. We do not agree that Ofcom have correctly assessed the impact which their proposals would have on TV You! Ltd who broadcast Sumo TV in the General Entertainment section of Sky's EPG. We expand further on this below.

b) Do you agree with our understanding of the industry and operators?

See our comment on Question 1a).

### **Question 2:**

Do you agree with our analysis of the options available for regulation of the promotion of premium rate services of a sexual nature, and

a) that on the basis of options, a change to the existing rules appears merited?

b) of the options presented, Option 4 meets the regulatory duties and suggests least potential impact on stakeholders?

c) that the scheduling restrictions of 9pm to 5.30am and requirements for labelling and EPG position under option 4 offer appropriate protection for viewers?

### **Question 3:**

Do you agree with our analysis of the options available for regulation of the

promotion of live personal psychic services, and

a) on the basis of the options, that a change to the existing rules appears merited?

We agree that a change to the existing rules is merited but do not feel that substantial change is required since it appears clear that the principle concern members of the public have is with the Occult. Sumo TV, do not broadcast Occult content. Sumo TV simulcast third party Psychic content which is general entertainment in nature and very popular with viewers and consumers. We have an impeccable complaint record reflecting viewer/customer satisfaction with our broadcast content.

b) of the options presented, Option 4 meets the regulatory duties and suggests least potential impact on stakeholders?

We do not see the need for major regulatory change and therefore feel that Ofcom should consider a fifth Option, one which simply focuses on prohibiting the broadcast of Occult content which research suggests is the primary concern of viewers. Provided there is clear labeling, any regulation should be “neutral” regarding matters such as the platform, technology and billing process. This would be consistent with the requirement of Article 19 of The Audiovisual Media Services Directive (*89/552/EEC amended by 97/36/EC and 2007/65/EC*).

Option 4, of the options presented, is preferred over the other three options. However, if implemented without further amendment, it would seriously damage our business.

Sumo TV is a general entertainment service which broadcasts third party content – it effectively advertises and promotes that content to its viewers who welcome the opportunity to see a diverse range of content genre’s, of which Psychic content is one of the most popular. Our revenue model is based on fee/revenue sharing arrangements with the dedicated Psychic PTV broadcasters who simulcast on Sumo TV. If they and we are prohibited from doing this any longer – which would be effect of Ofcom’s Option 4, it would significantly damage our business and could affect its continued viability.

We see no justification for any proposal by Ofcom which restricts viewers from viewing content which has general entertainment value. Our understanding is that if Ofcom proceed with Option 4 unamended or without considering a new Option 5, then the dedicated Psychic TV broadcasters will be put out of business since they critically rely on the ability to market their products and services with third parties such as Sumo TV.

Sumo TV are channel 212 of the Sky EPG whereas Psychic TV are channel 866. It is mutually beneficial to both parties that Psychic TV are able to drive viewers to their content by advertising on Sumo TV. It benefits Sumo TV since not only do we directly derive valuable income from the relationship but we also significantly enhance the quality of choice that we are able to offer our viewers by being able to advertise Psychic PTV content on the Sumo TV channel.

We cannot believe that Ofcom intended this to happen or that the researchers and viewers engaged in the background research would wish this to be the case or had an appreciation of these points. We are confident that they would not have any wish to bring into being changes which damaged and in the case of the Psychic PTV broadcasters possibly destroyed, legitimate business interests, livelihoods and deprived viewers and consumers from the ability to choose to view non-offensive general entertainment content.

As the consultation document frequently makes clear, Ofcom have a number of regulatory duties. We do not see that any of the four options, as currently drafted, would fulfill those duties.

c) that the restriction of promotion to specific live personal psychic services and the requirements for labelling and EPG position provide appropriate protection for viewers?

See our response to 3b) above.

**Question 4:**

a) Do you agree with the principles identified for changes to the Advertising Code rules on promotion of PRS of a sexual nature (rule 11.1.2) and psychic practices (rule 15.5)?

We support protecting viewers from being exposed to content which causes offence. However, Psychic TV as a broadcast genre is very niche. It is popular with viewers and this is acknowledged by Ofcom in the consultation document. It has general entertainment value and provided it is clearly flagged up so that viewers have prior awareness that they may be exposed to viewing the same, it then becomes a matter of viewer choice as to whether they do so.

The existing broadcast platforms are entirely adequate as they currently stand, for alerting viewers to the nature of the content being broadcast. There is no justification in our view for Ofcom introducing changes which would in-directly have the effect of causing undue damage to Psychic PTV as a business activity in the UK nor to the myriad third party broadcasters who would also suffer loss in profitability/viability as a consequence of prohibiting simulcasts on general entertainment channels.

Ofcom will be aware that no other EU member state has felt the need to proceed in the manner proposed by Ofcom. We note that in the impact assessment no reference is made to the experience of other European jurisdictions – for example that of Germany. Ofcom are clearly mindful of European legal decisions and it would seem appropriate therefore were Ofcom to inform themselves and all stakeholders with the experiences of other European member states before any final conclusions are made.

In summary therefore, we do not see the need for any rule change which would be disproportionate and clearly damage stakeholder interests. We would support a rule

change which reflected consumers concerns regarding the Occult provided that it was clearly defined.

b) Do you agree with the wording of the proposed rules? If not, please suggest alternative wording.

We do not agree with the current wording. We believe it is premature to suggest alternative wording until such time as Ofcom have had the opportunity to reconsider the proposed rule changes in light of our concerns and those of other stakeholders insofar as they relate to whether the proposed changes are proportionate.

We believe that Ofcom should consult further with affected stakeholders concerning the impact on their business activities that would arise if simulcasts of dedicated Psychic PTV content by general entertainment broadcasters were no longer possible.

We do not believe that this request for further consultation should unduly delay matters.