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Organisation

Organisation (if applicable):
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Keep nothing confidential

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Yes

I confirm that I have read the declaration:
Yes

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Question 1: Do you have any comments on the drafting of the proposed amendments to the Broadcasting Code set out in Section 4? Please provide drafting suggestions where appropriate.:

Channel 4 is not clear on the rationale for the removal of the words “or to interact with” from the definition of “programme related material”. Rather than avoid uncertainty, this deletion will create uncertainty, particularly, but not limited to, in relation to activities in radio.

As the proposed revision of section 10.6 to 10.11 stands, Channel 4 has a number of concerns.

The proposed amendments to Section 10 of the Broadcasting Code are partly predicated on the key question of whether broadcast content comprises “a real offer of services” (see paragraph of the consultation document). Yet the provision of user-generated editorial content through, typically, 084 or 087 numbers can not and must not, in Channel 4’s view, represent “an offer of services”. Nor should there be any room for debate about whether it does or does not.

Similarly it should be perfectly clear that the proper promotion of email addresses, the Channel 4 website url and non PRS activity is plainly permissible as long as there is appropriate editorial justification.

Other definitions

Ofcom intends to apply new rules, which stem from the recent ECJ judgement, to radio services although, in the case of radio content such as phone-in programmes, or programmes where listeners provide opinions on topics of current interest, there is no “provision of services in return for payment”.

It is a flawed approach, in Channel 4’s view, to rely so heavily on the notions in the ECJ judgment without properly defining and adapting them to the precise regulatory purpose for which the new rules are intended. “Products and Services” should be

defined, to make it plain what mischief is sought to be addressed and in what way the Ofcom rules are different from the ECJ situation. Equally, the current proposal represents confusion through the use of double definitions “ see the interaction between the proposed definition of programme related services and the proposed 10.10.

Channel 4 advocates a streamlining of the sections so that the regulatory purpose is clearer and most appropriate and, importantly, that sterile legal arguments about meaning can be avoided.

Channel 4 would propose a definition of “Products and Services” as follows:

Any activity for which a viewer or listener is charged and the broadcaster has with the provider of the service paid for by the viewer or listener any form of revenue-sharing arrangement or other arrangement financially beneficial to the broadcaster.

This kind of definition should immediately assuage Ofcom’s concerns and bring certainty to the industry.

It would mean that the definition of “Programme Related Material” could become:

Products and Services or other activities of the Broadcaster that are:

(a) directly derived from or integral to a particular programme; and

(b) specifically designed to allow listeners or viewers to:

i. benefit fully from; or

ii. interact with

that particular programme or a related programme (our emphasis).

Channel 4 takes the view that the formula “directly derived from” is too limiting: there will be occasions where the Products and Services are integral to a programme but could not said, in any way, as a matter of usual statutory interpretation, to be derived from the programme. Voting in Big Brother, for instance, is integral to the programme but not directly derived from it. Listeners calling to contribute their opinion to radio programmes driven by such opinion-based content are integral to such radio programming “ but it could not be said their calls were derived from the programming.

Suppose Channel 4 broadcast an education television series about the lives and achievements of the British Prime Ministers and asked young viewers to submit, through PRS, their reading of a short statement they wrote about which Prime Minister most inspired them and why, with a view to the best of them being selected by, say Tony Blair MP, and played out in the final episode in the series - with the writers present on screen and receiving a presentation. In those circumstances, the PRS would be integral to an element of the programme, but could it truly be said, as a matter of usual statutory interpretation, that the PRS was directly derived from the programme”

Further to this, suppose the series was part of a wider “Bringing contemporary history to our youth” season involving both television and radio “ does Ofcom take the view that in such a season, it would be impermissible for a stand alone Radio documentary about, say, War Time Leadership to reference the TV series (both part of the same umbrella series) and its competition” As the provisions stand, that would be the result. Clause 10.10 should , in Channel 4’s view, plainly state that Premium Rate Services and other telephony services based on revenue-sharing arrangements (whether similar to PRS arrangements or not) will constitute Products and Services. We propose the following clause 10.10:

Premium rate services and other telephony services based on revenue-sharing arrangements between the broadcaster and service provider will be Products or

Services and must not appear in programmes except where they constitute Programme-related Material.

Question 2: Do you have any comments on the draft explanatory guidance set out in Section 4? Please provide drafting suggestions where appropriate.:

In relation to the “Considerations that would tend to suggest compliance with Rule 10.11” Channel 4 would recommend that reference to “occasional only” be removed and the relevant sections focus on content and editorial justification. As the proposal stands, the relevant section reads:

“ Reference within the programme to the PRS are occasional only.

“ The degree to which PRS is referred to within the programme is clearly justified by the degree to which the PRS contributes to editorial content.

Our suggested amendment is as follows.

“ References within the programme to any PRS are clearly justified by the degree to which the PRS contributes to editorial content and are not unduly prominent given the nature of the programme and the expectations of the audience.

Because of the other suggestions Channel 4 has made regarding drafting of key provisions, Channel 4 supports a range of amendments to the explanatory advice to clarify the issues raised and discussed above.

Question 3: Do you agree that the proposed rules should apply to radio as well as to television?:

As long as the proposed rules are drafted on the basis that the inherent differences between Radio and Television programming is addressed, then, yes, in principle, Channel 4 accepts that the same rules can apply to both media.

However, it is critical that the proposed amendments change. As they stand, Channel 4 has fundamental reservations about the unduly restrictive potential application to Radio.

For instance, Channel 4 is concerned that it will be extremely difficult to satisfy the “directly derived from a particular programme” requirement as it currently stands - radio is often less about specific programmes and more about programming segments/blocks.

For example, under the current proposals, radio would be prevented from promoting general music based competitions throughout the day or over a number of days during various different slots as these may not satisfy the “directly derived from a particular programme” criteria. Such competitions would also not fall under the revised programme-related material definition as, again, they may not directly derive from a particular programme and the proposed amended definition now excludes interaction by listeners.

Care needs to be taken to ensure that the appropriate separate needs of Radio are properly addressed. This may be achieved in a number of ways. Adopting the amendments to clause 10 suggested above would, however, address Channel 4’s concerns. We hope that Ofcom will agree that a key purpose of a consultation process is to interrogate the practical impact of proposed changes to the regulatory rules.

Whilst absolutely accepting the utmost importance of best practice and integrity in PRS, Channel 4 also feels that it is crucial that in this process broadcasters identify potential areas of concern and undue restriction on responsible editorial freedoms which are of genuine benefit to the audience.

Additional comments:

Since February 2007, a number of concerns about premium rate services (“PRS”) across the broadcast industry came to light which have damaged public confidence in broadcast PRS. This is a matter of continuing serious concern to the Channel, and we continue to monitor in detail the Channel’s PRS activity.

Channel 4 welcomes new Broadcasting Code rules (“the Code”) which aim to provide clear guidance to broadcasters and to ensure that best practice is consistently adopted across the industry.

Channel 4 wishes to make it plain that it agrees completely that PRS activity should only be used where there is appropriate editorial justification and not simply as a means of revenue raising.

Currently, Channel 4 permits PRS activity only in broadcast programmes where such services are integral to the editorial purpose of the programme: audience voting on Big Brother and Grand Designs Live are examples.

Currently, competitions which see entrants win prizes are all run in ways which do not involve any premium rate charge to the entrant.

However, Channel 4 will soon be launching the first of its radio stations and, as part of this consultation process, has taken into consideration how the proposed changes would affect its planned radio services. Channel 4 strongly takes the view that, while there may be many areas of overlap, it must not be forgotten that Radio is an entirely different form of content to Television, and its history and evolution reflect this as does the listener’s expectations of what their interaction with Radio can and will provide. The Code should reflect this.

Channel 4 has concerns about the lack of regulatory certainty the proposed new rules would provide for radio. Much radio content encourages, and indeed often relies for editorial purposes on listener interaction, for example, by inviting listeners to text in comments or phone-in programmes. References within radio programmes for interaction (particularly calls to action within radio phone-in programmes) are not occasional only, and can be the main element of broadcast content (for example, in a dedicated phone-in programme).

Overall, while we have no general objection to the new rules applying to radio, we are concerned about the regulatory uncertainty raised by paragraph 4.30, particularly as we are planning to launch a new radio station which will rely significantly on interaction with our listeners. We would therefore welcome a clear statement from Ofcom about how the proposed new rule would apply to existing radio programming, and if it can identify any examples of existing or past radio programming which would not comply with the proposed Rule 10.11. Alternatively, the amendments we propose would address our concerns.

Our response to the consultation is framed in this context.