

GCap's response to Participation TV Part 2: Keeping advertising separate from editorial

Introduction

1. GCap provided a confidential response to the first PTV consultation. In respect of Section 6 of that consultation, which looked at the separation of advertising from editorial content, GCap considered Option 2 the most appropriate, i.e. it supported Ofcom's proposal to amend the Broadcasting Code to ensure the separation of advertising and editorial.
2. Our main reservation was that the prohibition on payment from anything other than telephony based payments could impact future innovations. Draft rule 10.10 (in the original consultation) of the Broadcasting Code said that the listener should be charged for participation at the same time via the same process and we argued that it was not difficult to envisage alternative schemes satisfying this rule in a digital world, e.g. over the internet.
3. We were also concerned that Ofcom was proposing to apply changes to the radio industry without carrying out an impact assessment on radio as it had with television.

Response to this consultation

4. Following the judgement of the ECJ in October 2007, Ofcom has revised its proposed amendments to the Broadcasting Code. Although GCap considers the revised Code to be a little clearer and more comprehensive than the original draft, we are concerned that the new Code rules have followed a legal ruling which did not apply to radio and which Ofcom has applied to radio with little consideration of the potential impact.

Payment mechanism

5. Ofcom says that it opposes the use in PTV (and similar radio programming) of payment methods that are not inherently part of the means of communication between viewer and licensee. Ofcom argues that it allows communication via revenue share telephony because people like to communicate with broadcasters and telephony is universal. We would point out that we have witnessed strong growth in the use of our online radio players and that the internet could facilitate creative participation in programming that our listeners would enjoy. There may be future technological innovations which would be welcome by listeners but prohibited under the proposed Code. While we note that Ofcom believes changes in technology can be accommodated by future Code and Guidance amendments, this could see broadcasters lose out to other media that are able to adopt new technology quickly while TV and radio have to wait for Ofcom to amend the code.

Impact assessment

6. The original consultation did not include any impact assessment of the proposals on radio and we expressed our disappointment at this in our response. We are surprised that no impact assessment has been included for radio in this consultation either. In relation to the options for ensuring the separation of editorial and advertising, the original consultation included an impact assessment on pages 52-63 which did not mention radio once. Having raised this in our response to the 2007 consultation we believe Ofcom should have more explicitly considered the impact on radio in this current consultation.

Drafting proposals

7. There are some terms in the proposed Code which we consider too vague and potentially confusing. In particular rule 10.11 includes terms such as 'directly derived' and 'undue prominence' for which it would be helpful to have clear definitions. In addition it would be useful to know how Ofcom would determine the 'primary' and 'secondary' objectives of radio programming as opposed to TV programmes.

Wider review of the Broadcasting Code

8. We support the RadioCentre's recent request for Ofcom to carry out a wider review of Sections 9 and 10 of the Broadcasting Code in relation commercial references within radio programming. We believe the current rules prevent the industry delivering creative commercial solutions which would enhance output while causing no consumer harm. We believe Ofcom's proposed amendments to the Code with respect to radio would make more sense in the context of such a review.

Consultation questions

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.

9. We maintain that listeners could reasonably participate in programmes via payment mechanisms other than PRS, and do not believe Ofcom has taken into account the different ways that consumers interact with TV and radio and the platforms they use to do so. As per paragraph 9, it would be helpful if Ofcom provided firmer definitions of terms that appear in the Broadcasting Code such as 'directly derived', 'undue prominence' and 'primary' and 'secondary' purposes of programming as they relate to radio.

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

10. We believe the guidance is helpful; in particular the section outlining what characteristics of PRS use would and wouldn't be considered a breach of

the Code. While we note that some thought has been given to the differences between TV and radio, it would be helpful if the guidance explicitly considered TV and radio separately given the different ways that they use PRS in programming.

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

11. We would like to see Ofcom consider its proposals for premium rate numbers and programme related material in the context of a wider radio-specific review of Sections 9 and 10 of the Broadcasting Code. We believe that, in looking to answer this question, Ofcom should carry out an impact assessment of its proposals on the radio sector.