

# Participation TV Part 2: Keeping Advertising Separate from Editorial.



## Response to consultation by the Premium Rate Association for and on behalf of its members.

June 2008

### *Introduction*

The Premium Rate Association thanks Ofcom for this opportunity to add comment to this consultation piece.

As a non profit, membership driven, trade organisation operating in the Premium Rate telephony sector we welcome action to remove disreputable operators and questionable practices. Our members understand the need for balanced regulation to instil public trust in the premium rate billing mechanism and we supported all relevant and appropriate industry agreed regulatory change in this arena.

The Association is keen to reiterate the findings of previous studies into the PTV market which have made it very clear that today's broadcast consumer enjoys the ability to interact with their programmes. Premium Rate Telephony is a fantastic method of facilitating this type of interaction and with participation supplementing the broadcaster's abilities to communicate with their audience and offering new revenue opportunities.

***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.***

10.6 – We are concerned that no adequate definition of editorial content exists leaving this proposed paragraph open to an unacceptable level of personal interpretation. We do not believe that any definition should be based solely on the commercial intent; it should be determined on the entertainment value viewers attach to the programming. The determination of the entertainment factor rests ultimately with the viewer and their ability to change the channel, based upon full and transparent information on what they expect

to receive and will receive. Editorial content is therefore self-policing, as broadcaster will not continue to air shows with insufficient viewing figures, or response levels.

What may be satisfying editorial content to one person may well not be to another, as such, editorial content is subjective. We are aware that a judge recently said that the format of the Jeremy Kyle Show – which uses PRS - amounted to bear baiting. In view of this, is Ofcom also planning to reclassify this show and similar content?

10.7 - The PRA are in agreement with Richard Ayre's statements that "Broadcasters offering PRS have a set of obligations to individual customers which go beyond their traditional responsibilities" and that "further regulatory intervention must be centred upon securing the broadcaster's delivery of its obligations". For this reason and our understanding of the role and influence that the broadcaster has over the structure and delivery of the PRS in the PTV arena we believe that the responsibility for regulatory compliance must lie primarily with the broadcaster, who must wisely monitor their chosen Service Provider's compliance with the Code.

On this point we think it important to re-emphasize that under PhonepayPlus' regulation of premium rate services the broadcaster would be defined as the Information Provider in the value chain and would no doubt be contractually obliged by their Service Provider to ensure that the service was run in a manner that complied with PPP's code of practice. Indeed PPP under its 11th Code is already able to raise breaches against the broadcaster/network in certain situations, so there is already a method of pointing the ownership of regulatory responsibility at the broadcasters. As we have pointed out asked and reiterated to all authorities involved there are enough rules and not enough enforcement.

10.8 – The PRA support the principle of sponsorship and that any sponsorship or activity of a commercial nature is made clear to the audience, either by way of an audible announcement or by means of a clear on screen message. The key to a protected consumer is information.

We feel that sponsorship is an important tenant of the Television Without Frontiers Directive, which will enabling organisations to look outside of the traditional advertising methods in order to generate revenues and should be utilised in its widest sense. We believe that the directive paves the way for the removal of traditional barriers between advertising and editorial and move towards seamless integration.

A more symbiotic relationship between advertising and editorial should be welcomed, providing viewers are aware of commercial intent. We note that consumer protection is already provided by the Consumer Protection from Unfair Trading Practices Regulations 2008. There is already enough legal backbone to breach or prosecute organisations causing public harm, yet an apparent unwillingness to use the powers already provided.

10.9 – The PRA has no objection that TV services/products may be billed by PRS, although we note that VISA and MasterCard may have issues and questions about the methodology of restricting their payment method.

10.10 - The PRA supports the principle that premium rate numbers should be related to the broadcast material and are happy with the proposed wording.

It is our belief that lines, once dialled, may provide the caller the option of connection to an off screen operator in preference to a call queue during peak periods. To allow this we believe Ofcom should not seek to be overly prescriptive with its interpretation of this rule.

10.11 – The PRA are concerned about the subjective requirements relating to editorial balance. We believe that decisions about editorial balance must rest with the consumer, who has the power to change the channel if dissatisfied with the perceived editorial value. It is the view of PRA that the last three bullet points be removed.

10.12 - The PRA support the principle and wording.

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

The PRA support a clear definition and industry accepted set of guidelines on the length of time premium rate numbers should be displayed. If restrictions are to be put in place, we believe that the wording “Reference within the program to PRS is occasional only” is too ambiguous. It may be helpful if the acceptable amount of time the number can be promoted be expressed.

We support a level playing field within which all channels operate under the same rules enforced consistently. It is not the small ‘questionable’ channels generating complaints, as PPP testifies; it is the well known terrestrial brands causing consumer harm. It appears there is reluctance by the regulator to step in when large brands are involved, despite evidence of the potential and real consumer harm.

The PRA can see no justification for setting PRS charging restrictions other than those already set for general PRS use.

We question the requirement for a stipulation placing restrictions on the revenue split between PRS and the more traditional method for generating revenue to fund content.

Premium Rate Services are either acceptable as a tool for interaction or not. We are concerned that rather than providing clarity and transparency the proposals are creating further grey areas and restriction on consumer choice.

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

Whilst disagreeing with the proposed rules, it would seem sensible for both genre of broadcaster to be under the same license obligations. The goal of increased consumer confidence in PRS as a payment mechanism requires consistency of regulation.

***Additional comments:***

Unfortunately, it is the Premium Rate Association's view that the current Ofcom proposal does not strike a balance between public protecting and the interests of the industry. It is our belief that the proposal strays away from the regulation of a payment mechanism and into the censorship of personal entertainment. Therefore we have concerns that the proposal is contrary to the view expressed in the conclusion of the Culture, Media and Sport Select Committee's 2007 report on Call TV Quiz Shows, that regulation 'should not be overly censorious in nature'.

We are concerned that in these proposals Ofcom is seeking to reclassify to achieve censorship. In doing so, Ofcom is shifting on to the ASA the regulation of content that is 'publicly perceived' - regardless of its official classification - as editorial programming. It was the clear view of the Select Committee in the conclusion of its report that there should be a drive towards a single regulator. Further subdivision of PRS regulation, as proposed, is therefore contrary to the view expressed by the Committee.

We wish to question what benefit, other than censorship, can be obtained by proposals to reclassify content. It is the view of the PRA that consumers make their choice about television content based upon the entertainment value they obtain from it, not on a regulatory definition. It is unlikely that the average consumer registers the distinction between the teleshopping classification and the editorial bracket in a way that extends them any additional protection. The proposals therefore add further complexity rather than clarity to the way participation television operates, without any public protection benefit.

Consumers already have the power of personal censorship through the remote control and the PRA is concerned that the industry is set to be damaged by Ofcom proposals that provide no clear public protection benefit. Surely the job of the regulator as defined by the Better Regulation Task Force is to provide transparency, accountability, targeting, consistency and proportionality. We believe to ensure consumer choice it is important for the regulator and industry to sit down and have proper dialogue on these issues, allowing the industry the opportunity to address concerns without recourse to draconian measures.

The European Television Without Frontiers Directive (2007) aimed to relax the boundaries between advertising and editorial content; freeing up broadcasters to be more creative with their revenue streams through the integration of advertising and editorial. It

is unclear how in the spirit of this directive these proposals can be seen as anything other than a retrograde step.

It was through the Gambling Act 2003, it could be argued, that the ITV style quiz shows were able to immerse, as the Act effectively provide gambling without restrictions. The regulator was woeful at being able to assess the outcome of this de-restriction and the current proposal now attempts to close the barn door after the horse has bolted. The industry, it now appears, is being penalised generally for the inaction of the regulator to address the action of a small minority.

Had the industry's past suggestions been taken up by the regulator, large branded channels may not have been in a position to cause large scale consumer harm and damage to the industry's reputation. We are concerned that what we see in this proposal is not a solution to the issues of consumer harm; it is a knee jerk reaction to the negative media attention created by the regulators failure to enforce its existing policy efficiently.

As a result of these proposals, it would also appear that the BCAP Code now needs to be urgently revisited as potentially the PhoneyPayPlus Code of Practice takes precedence over it, creating further ambiguity around premium rate regulation.

Our cautionary note to finish is that many organisations such as ours have repeatedly tried to draw the regulators attention to what were obvious failings in the operation of the types of service prior to the 2007 fiasco. The regulator's ineffectiveness in enforcing an already adequate code should not be used as a ruse to ban content which appears to be enjoyed by the UK population.

In this consultation Ofcom has not demonstrated what consumer harm these types of channel present, there has been no risk assessment nor has any evidence presented that the cause damage. This appears to be a knee jerk reaction which will lead to censorship and a reduction in consumer choice and benefit. It could be argued that censorship of this nature is by its very nature tantamount to consumer harm.

We are concerned by the apparent return to the 'Mary Whitehouse' censorship of the past; a system which has been proven to be unpopular and ineffective. We hope that Ofcom will steer away from implementing a similar totalitarian regulatory regime.