



## **Response to Ofcom Consultation on New Broadcasting Code Rules for the Use and Promotion of Premium Rate Services (PRS) in Programmes**

Sky has the following comments on the drafting of the proposed amendments to the Broadcasting Code and draft explanatory guidance proposed in the consultation document:

1. **Meaning of 'Programme-Related Material':** Sky submits that in amending the definition of 'programme-related material' ('PRM') it is unnecessary to replace 'specific' with 'particular'. A definition that specified that PRM should be 'directly derived from a programme' would be sufficient to ensure that PRM were adequately linked to a particular item of editorial content. Use of 'specific' or 'particular' raises a number of unintended consequences, which are avoided by removal of any qualification to 'programme'. For example, Ofcom has previously indicated that the promotion of the availability of DVDs for an earlier season of a particular series may be shown after an episode of the current series and still comply with the PRM rules, notwithstanding the fact that the PRM is derived from the earlier season, not the current season. It is preferable that the Code reflect Ofcom's intention and practice, and visa versa.

In any event, should Ofcom adopt an amended definition of PRM, it must also amend its guidance on this section of the Broadcasting Code.

2. **PRS as PRM:** It is not clear how a PRS used to enable viewers to participate in a programme may be 'directly derived from a [particular] programme'. Whilst this is a condition of the current rule 10.9 (second bullet), Ofcom might sensibly take this opportunity to clarify the meaning of this phrase in this context. This would be particularly helpful when new rule 10.11 includes as an additional condition that 'the service enables viewers or listeners to participate directly in or contribute directly to the editorial content of the programme'. In this context, it is not clear what the 'directly derived' condition adds to this additional formulation.

3. **Rule 10.11:** Ofcom should clarify the distinction (if any) between the final bullet of Rule 10.11, and the penultimate bullet, which both require that the primary purpose of the programme be editorial content, and that promotion and use of the PRS be secondary:

- *"the programme consists primarily of content other than the promotion and use of the service; and*
- *the primary purpose of the programme is editorial, and any commercial activity associated with the service (including but not limited to the generation of call revenues) is secondary to that purpose."*

If the promotion and use of the PRS were the primary content of the programme, it would also be the case that the primary purpose was not editorial and that any 'commercial activity associated' with the PRS was not secondary. Accordingly, the penultimate bullet is otiose.

4. **The Guidance to Rule 10.11:** Under the guidance to Rule 10.11, as a consideration tending to suggest compliance with that rule, the proposed guidance refers to the programme

providing viewers with “*a genuine opportunity to participate in... editorial content.*” Neither the further bullets regarding compliance, nor those discussing non-compliance, elucidate the meaning of a ‘genuine opportunity’. In the light of Ofcom’s recent experience, it would be helpful to have further guidance on this issue.

5. **Rules applicable to ‘adult chat TV’:** In relation to ‘adult chat TV’, Ofcom’s consultation document states that an option for these types of services is to “*become properly encrypted as the [BCAP Advertising Code] does allow adult chat phone services to be advertised on encrypted adult entertainment channels*” (paragraph 1.14 and paragraph 4.23). Although the BCAP Advertising Code does not define what is meant by “*encrypted elements of adult entertainment channels*”,<sup>1</sup> Ofcom states in its consultation document that it would “**expect encryption arrangements for such channels to be similar to those necessary for subscription-based adult channels e.g. including registration and subscriber management systems. These arrangements for the supply of adult services are required by Rule 1.24 of the Broadcasting Code**” (emphasis added). Accordingly, whilst paragraph 4.23 of the consultation document makes specific reference to Rule 1.24 of the Broadcasting Code, it is not clear whether ‘adult chat TV’ services will merely be *expected to broadly* comply with Rule 1.24, or whether compliance with the requirements of that rule will be an *absolute requirement* for such services going forward. There is therefore a risk that broadcasters of ‘adult chat TV’ services will be unclear as to whether Ofcom expects them to operate the same level of protections as those operated by other broadcasters of adult services (presuming this is, indeed, Ofcom’s intention).

The potential confusion arises due to misconceptions regarding the nature of ‘encryption’ on Sky’s digital satellite platform. A service does not need to be available on a ‘pay per view or ‘subscription’ basis in order to be classed as ‘encrypted’. An encrypted service may’ in some circumstances’ be freely available for viewing by anyone with a valid viewing card. For example, the UK terrestrial channel ‘five’ is encrypted on Sky’s platform and may be viewed by any owner of a Sky box with the appropriate viewing card. There is no need for the viewer to be a subscriber to any retail service in order to view the channel. The purpose of encryption in this circumstance is to prevent receipt of the channel in territories other than the UK, where the broadcaster has not acquired the necessary rights.

Accordingly, ‘encryption’ of the type applied to five would not provide the same level of protection provided by channels which currently comply with Rule 1.24 of the Broadcasting Code. To comply with that rule, additional measures are required, including mandatory PIN protected encryption system or other equivalent protection, and a detailed billing system for subscribers’. Accordingly, further clarification of the encryption and ancillary arrangements required for the continued broadcast of ‘adult chat TV’ services should be provided by Ofcom.

Sky

6 June 2008

---

<sup>1</sup> Rule 11.1.2 states that “*Premium rate services of a sexually explicit nature (ie those which operate on the 0909 dialling code) may not be advertised. An exception is made for premium rate voice services of a sexual nature, which may be advertised on **encrypted elements of adult entertainment channels** only*” (emphasis added)