



Participation TV Part 2: keeping advertising separate from editorial

A consultation on new Broadcasting Code rules for
the use and promotion of premium rate services in
programmes

Consultation

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Section 1

Executive summary

New rules about premium rate services promoted in programmes

- 1.1 Ofcom is proposing new Broadcasting Code rules for programmes involving participation by viewers or listeners via premium rate services ('PRS'). These rules ('the proposed rules') will make absolutely clear that such programmes must not in effect be vehicles for the promotion of PRS.
- 1.2 The proposed rules will help ensure three important objectives:
 - that audiences and consumers are adequately protected;
 - that advertising is kept separate from programme content ('editorial'); and
 - that broadcasters do not circumvent advertising prohibitions by using programmes to promote services that cannot be advertised.
- 1.3 The proposed rules are set out in full in Section 4 of this consultation and summarised below:
 - Broadcasters may only charge viewers via PRS to take part in programmes (not by credit card, direct debit, cash etc).
 - Where a PRS is used in a programme for audience participation, it must not be given undue prominence within the programme.
 - The programme must consist primarily of content other than the promotion of the PRS.
 - The primary purpose of the programme must be editorial, and any commercial activity associated with the PRS (e.g. generation of call revenues) must be secondary to that purpose.

Ofcom's 2007 Consultation on Participation TV

- 1.4 This consultation follows Ofcom's consultation in July 2007 on *Participation TV: protecting viewers and consumers, and keeping advertising separate from editorial* ('the 2007 Consultation') and an important judgement by the European Court of Justice ('the ECJ') on 18 October 2007.
- 1.5 The 2007 Consultation set out proposals in respect of two separate but related issues:
 - PTV Part 1: Protecting viewers and consumers across all types of television content that encourages viewers to take part ('Participation TV' or 'PTV'). This was of particular significance in view of the number of serious compliance and editorial failures in PTV (particularly regarding PRS voting and viewer competitions) that came to light in 2007, most notably in mainstream programming broadcast by the public service broadcasters. Ofcom published a

final statement on PTV Part 1 on 19 February 2008¹. The issues in respect of PTV Part 1 are therefore not discussed further in this current consultation.

- PTV Part 2: Ensuring that advertising is kept separate from programme content ('editorial') in accordance with European broadcasting legislation and UK regulation. This is a particular issue in programmes, blocks of programmes and indeed entire channels that are predicated on the use of PRS (the key genres being dedicated quiz, psychic and adult chat TV services), rather than in mainstream programming.
- 1.6 The 2007 Consultation said that Ofcom's preferred option for PTV Part 2 (subject to consultation responses and further consideration of all the relevant issues) was that new rules should be added to the Broadcasting Code to limit the extent to which PRS may be used in programmes. Suggested drafting was also provided. One of the other options was that all programmes predicated on the use of PRS should no longer be classified as editorial but as teleshopping (essentially, long-form advertising containing direct offers). Out of the possible options, stakeholders favoured Ofcom's preferred option for stricter rules to be added to the Broadcasting Code.

Decision by the European Court of Justice

- 1.7 We made clear in the 2007 Consultation that a judgement was expected from the ECJ as to whether a quiz TV show (where viewers call a PRS line to take part) could be classified as teleshopping, and that the potential implications for UK broadcast licensees were extremely significant.
- 1.8 The ECJ published its judgement on 18 October 2007, just after the 2007 Consultation closed. It said that a quiz TV show could be classified as teleshopping (essentially, long-form advertising containing direct offers) if – taking into account certain factors – it included "a real offer of services". Ofcom believes that the significance of the ECJ's judgement extends beyond blocks of quiz TV to other genres of PTV displaying similar characteristics, for example adult chat TV and psychic TV.

Ofcom's decision that new rules are required

- 1.9 Having carefully considered both the stakeholder responses to the 2007 Consultation and the ECJ judgement, Ofcom has concluded that new rules are required to ensure that programmes only use PRS where there is sufficient editorial justification and are therefore not simply vehicles for the promotion of what is essentially a commercial, revenue-generating service.
- 1.10 The proposed rules take into account the factors identified by the ECJ as relevant. They are therefore different to – and indeed stricter than – the draft rules proposed as Ofcom's preferred option in the 2007 Consultation. Whilst we have concluded that new rules under the Broadcasting Code are indeed required regarding the use of PRS in PTV, in the interests of fairness, transparency and proportionality, we are now consulting on the wording of those rules.

Effect of the new rules

- 1.11 The advertising standards codes provide significant protection for consumers, especially over misleadingness and other direct consumer detriment. It is appropriate

¹ <http://www.ofcom.org.uk/consult/condocs/participationtv/>

and proportionate that content that is in effect a vehicle for the promotion of PRS should be reclassified and regulated as advertising.

- 1.12 The proposed rules would apply to all programmes which feature PRS. Many mainstream programmes, such as game shows with a viewer competition element and reality shows, feature PRS in a secondary manner that is likely to comply with the new rules. Such programmes would therefore continue to be classified and regulated as editorial under Ofcom's Broadcasting Code.
- 1.13 Ofcom intends that, if programming does not comply with the proposed rules, then it must change significantly in order that it does comply and may continue to be broadcast as editorial.
- 1.14 If it does not change, then the broadcaster is only able to continue showing the content if it is possible to do so under the BCAP² Advertising Standards Code for Television ("the BCAP Ad Code"). If it is a prohibited advertising category under the BCAP Ad Code, i.e. adult chat on unencrypted channels and psychic practices, it must be taken off air. In the case of adult chat, there is a further option of the channel becoming properly encrypted as the BCAP Ad Code does allow adult chat phone services to be advertised on encrypted adult entertainment channels. If the content is not a prohibited advertising category, e.g. blocks of quiz TV or non-adult chat TV, to remain on air it must be reclassified as teleshopping and comply with the BCAP Ad Code. It must also comply with advertising minutage limits. These limits have particular consequences for the commercial public service broadcasters, that is ITV, Channel 4 and Five.
- 1.15 The implications of the proposed rules are discussed in detail in Section 4 of this document. This consultation does not cover betting and gaming services, which Ofcom is considering separately³.

Radio

- 1.16 Section 10 of the Broadcasting Code, which sets out rules to ensure that advertising and editorial content are kept separate, applies to radio and television equally.
- 1.17 This document focuses upon television because there are clear examples of television channels and programmes involving PRS that raise issues under the separation principle. However, there is some PRS-based quiz content on radio, and it is possible that similar concerns regarding the promotion of PRS in radio programming could arise in future. Also, Ofcom believes that, in addition to PRS, the proposed rules should apply to other telephony services based on similar revenue-sharing arrangements, e.g. 084 and 087 services. Radio phone-ins often involve such telephone services.
- 1.18 Ofcom therefore intends that the proposed rules should apply to radio as well as television. If radio content should use and promote PRS in a manner inconsistent with the proposed rules, then it may be considered to be advertising. It would then need to be clearly separated from programming and to comply with all the other requirements of the BCAP Radio Advertising Standards Code.

² Broadcast Committee of Advertising Practice

³ <http://www.ofcom.org.uk/tv/ifi/gambling/>

Responses to this Consultation

- 1.19 Stakeholders are invited to provide comments on the draft rules and on the specific questions set out in this consultation paper by 22 May 2008. Details of how to respond are provided at Annex 1. We are allowing a consultation period of six weeks, as we have already held a ten week consultation on the question of how to regulate the promotion of PRS in programmes in order to ensure a proper degree of advertising separation. We also published a pre-consultation Issues Paper in December 2006, which identified the regulatory challenges posed by content predicated on the promotion of PRS and sought comments from stakeholders.

Section 2

Background

PRS in programmes and the separation principle

- 2.1 Viewers and listeners enjoy taking part in programmes and having an opportunity to win a competition, influence the outcome of a programme or otherwise contribute to the programme. Increasingly, audience participation involves premium rate telephony services ('PRS').
- 2.2 Where Participation TV ('PTV') involves PRS and thereby generates revenue, it can present difficulties for the principle that television programmes (editorial) and advertising should be kept separate ('the separation principle')⁴. This then raises the question of how PTV should be regulated. Editorial content is regulated by Ofcom under Ofcom's Broadcasting Code. Advertising, including teleshopping (essentially long-form advertising including direct offers), is regulated by the Advertising Standards Authority ('ASA') under the BCAP⁵ Advertising Standards Code ('BCAP Ad Code').
- 2.3 PRS is used in a wide range of programming, from more familiar mainstream entertainment content such as reality shows (e.g. *Big Brother*), game shows (e.g. *Who Wants to be a Millionaire?*, *Deal or No Deal*) and magazine-format programmes (e.g. *Loose Women*) to more niche content focussing on a particular genre. There are now entire programmes, blocks of programmes and indeed channels dedicated to genres predicated – in terms of both the content itself and the funding of that content – on the use of PRS, for example adult-themed chat with female presenters ('adult chat TV'), standalone quizzes ('quiz TV') and psychic readings ('psychic TV').
- 2.4 This content, although currently regulated as editorial under the Broadcasting Code, often includes advertising-type elements, e.g. prominent (if not constant) display of PRS numbers, repeated calls to action, promotion of off-screen services. This is in contrast to more mainstream television, e.g. reality shows and magazine formats, where the PRS clearly influences the editorial content, is just one element and is not constantly promoted on-screen.
- 2.5 The BCAP Ad Code provides significant protection for consumers, especially over misleadingness and other direct consumer detriment. It is therefore appropriate and proportionate that content that is in effect a vehicle for the promotion of PRS should be regulated as teleshopping.
- 2.6 PRS lines for psychic readings and chat services are of course neither new nor limited to television. There are numerous such services without a television presence, often promoted via the internet or in magazines. However, when they are featured within what are ostensibly television programmes, they raise regulatory questions for Ofcom and broadcasters. The BCAP Ad Code prohibits advertisements for live adult chat services on unencrypted channels and for products or services concerned with the occult or psychic practices. There is therefore at least an argument that, by broadcasting under the auspices of an editorial service, adult chat TV and psychic TV services are circumventing the advertising prohibitions.

⁴ Article 10(1) of Directive 89/552/EEC ('Television Without Frontiers Directive') as amended by Directive 97/36/EC

⁵ Broadcast Committee of Advertising Practice

- 2.7 Some PTV channels that use PRS, e.g. dating and text message-based channels, are already categorised as teleshopping as their construction clearly allows little or no appreciable contribution to editorial content, no recognisable editorial is offered or they include straightforward offers of goods or services for sale. Such services are therefore regulated as advertising under the BCAP Ad Code. There are of course many other teleshopping channels that are not predicated on PRS, e.g. holiday and shopping channels; these services are not the subject of this consultation.

Key genres of content clearly predicated on PRS

Quiz TV

- 2.8 The last 12 months or so have seen a significant decline in the amount of quiz TV on air. There are currently no channels dedicated to quiz TV and, to Ofcom's knowledge, only Five (the channel) now broadcasts blocks of quiz TV.
- 2.9 Quiz TV is broadcast live and encourages viewers to call a premium rate number, which is displayed almost permanently on-screen, in order to solve a puzzle. The vast majority of callers do not get an opportunity to give their answer; instead they hear a recorded message telling them they have not been successful on this occasion. A very small proportion of callers are randomly selected during the course of the show and put through to the studio to give their answer. Successful contestants win prizes.
- 2.10 Quiz TV must currently comply with the Broadcasting Code and, in particular, Rule 2.11 which requires:
- “Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known.”
- 2.11 Both Ofcom and PhonepayPlus have issued detailed guidance and rules respectively specific to quiz TV. For example, under PhonepayPlus's code of practice, broadcasters must display on screen regular information about how many people are calling in.

Adult chat TV

- 2.12 Of the genres of PTV clearly predicated on the use and promotion of PRS, adult chat TV is now the most prevalent, with 17 dedicated channels and other channels broadcasting blocks of adult chat TV.
- 2.13 Adult chat TV is usually (if not always) unencrypted, i.e. available on free-to-air channels, and available pre-watershed as well as post-watershed. It involves one or more female presenters, usually described on air as 'babes', who ask viewers to call them – or another 'babe' who is not visible on screen. When a presenter takes a call, neither side of the conversation is audible on air (other than, occasionally, the presenter's initial greeting to the caller). Instead, while the presenter takes a call, either background music is played or another presenter talks to viewers. One or more PRS numbers are displayed on screen almost permanently; viewers may call in or text the presenters.
- 2.14 Some adult chat TV promotes PRS other than those that clearly enable participation in the show and it is often unclear how this type of promotional activity is consistent with the Broadcasting Code e.g. “We have girls at home waiting to take your call”.

Psychic TV

- 2.15 The third genre of PTV which raises concerns under the separation principle is psychic TV. There is currently one dedicated psychic TV channel but other channels, including Asian-language channels, appear to be broadcasting psychic TV content.
- 2.16 Typically, a presenter repeatedly asks viewers to call a premium rate number (displayed on screen all or most of the time) for advice or a reading (e.g using tarot cards) from an in-studio 'psychic', from 'psychics' visible on-screen but based outside the studio (either in a call centre or in their own homes), or from off-screen 'psychics'.
- 2.17 Viewers are also asked to text in; their text messages appear on screen from time to time. The in-studio 'psychic' responds to calls or text messages on-air, by giving advice or a reading. The other 'psychics' are sometimes shown on-air in split-screen but their conversations with callers are not audible to viewers.
- 2.18 In addition to questions of undue prominence and the promotion of products and services in programmes, this genre has the potential to raise concerns regarding vulnerable viewers. The Broadcasting Code seeks to address these concerns; amongst the relevant rules is Rule 2.8, which provides:

“Demonstrations of exorcism, the occult, the paranormal, divination or practices related to any of these (whether such demonstrations purport to be real or are for entertainment purposes) must not contain life-changing advice directed at individuals.”

Ofcom 2007 consultation

- 2.19 In July 2007, Ofcom consulted on *Participation TV: protecting viewers and consumers, and keeping advertising separate from editorial* ('the 2007 Consultation')⁶.
- 2.20 The 2007 Consultation set out four options for the regulation of PTV predicated on the use and promotion of PRS ('dedicated PTV').

Option 1: No change

- 2.21 Under Option 1, dedicated PTV content would continue to be regulated as editorial under the Broadcasting Code.
- 2.22 Ofcom said in the 2007 Consultation that it questioned whether the present situation was either satisfactory or sustainable. It noted that it was increasingly difficult to apply the Broadcasting Code in a way that was transparent, consistent and fair to broadcasters, including those who did not provide dedicated PTV services and new applicants.

Option 2: Permissible as editorial, subject to meeting strict criteria intended to limit the degree of commercial activity

- 2.23 Option 2 involved new rules for the Broadcasting Code that in effect would require that all phonecalls clearly contributed to on-screen editorial content, e.g. chat services provided by off-screen operatives would not be permitted. The vast majority of adult chat and psychic TV services would therefore need to change their business

⁶ <http://www.ofcom.org.uk/consult/condocs/participationtv/consultation.pdf>

models in order to carry on broadcasting as editorial content. However, we indicated that quiz TV would not necessarily be affected by the draft rules as it was arguable that quiz TV entries should be considered as direct contributions to editorial content.

- 2.24 This was Ofcom's preferred option in the 2007 Consultation. We considered that it would help ensure consistency with the separation principle, and that setting out simple but rigorous rules and detailed explanatory guidance would bring clarity and certainty to participation-based broadcasting.

Option 3: Permissible as editorial, subject to clear labelling

- 2.25 This option would require broadcasters to label PTV content predicated on the promotion of PRS to help viewers understand the commercial nature of the content. In return, broadcasters would be able to continue prominently promoting PRS in programmes.
- 2.26 We noted in the 2007 Consultation that Option 3 would allow a greater degree of commercial activity than was permitted under the Broadcasting Code without the need for editorial justification in all cases. This raised difficult questions under the separation principle.

Option 4: Classifying all dedicated PTV services as advertising

- 2.27 Option 4 as proposed in the 2007 Consultation was that dedicated PTV should no longer be permitted as editorial. Instead it should simply be reclassified as advertising. It could then only be broadcast subject to it complying with all the relevant advertising content and scheduling restrictions. This would have a significant impact on adult chat TV and psychic TV as the BCAP Ad Code prohibits the advertising of adult chat (unless on an encrypted adult channel) and psychic practices.
- 2.28 Ofcom said in the 2007 Consultation that this option would mean a clear division between services that incorporated an element of participation within a framework of clear editorial output (which would continue to be regulated by Ofcom as programmes) and those predicated on viewers paying to participate (usually by means by PRS), i.e. dedicated PTV (which would now be regulated by ASA and BCAP as advertising).
- 2.29 Ofcom was mindful in the 2007 Consultation of the potential impact upon adult chat TV and psychic TV, and considered that on balance Option 2 was the most proportionate approach at that time. However, we made clear that this was subject to consultation responses and the anticipated judgement of the European Court of Justice ('ECJ').

Consultation responses

- 2.30 Responses to the 2007 Consultation varied. Unsurprisingly, PRS providers and dedicated PTV broadcasters argued that there is no need to reclassify such content as teleshopping. However, other stakeholders, including ACOD and broadcasters not providing dedicated PTV content (e.g. Channel 4) said that such content is essentially advertising and that tighter regulation is needed.
- 2.31 Whilst ITV and Five argued that quiz TV should not be reclassified as teleshopping, that was before the ECJ judgement (discussed below).

- 2.32 Of the four options proposed, Option 2 received the most support from stakeholders. Ofcom remains of the view that the Broadcasting Code should be amended. However, as discussed below, we consider that new rules – based on factors identified by the ECJ and more tightly worded than those proposed as Option 2 – should be put in place.
- 2.33 Section 3 of this consultation considers the responses in more detail.

Judgement of the European Court of Justice

- 2.34 On 18 October 2007, in the course of proceedings between the Austrian communications authority and an Austrian broadcaster regarding a particular quiz show, the ECJ ruled that⁷:

“a broadcast or part of a broadcast during which a television broadcaster offers viewers the opportunity to participate in a prize game by means of immediately dialling a premium rate telephone number, and thus in return for payment, is covered by the definition given by Article 1(f) of teleshopping if that broadcast or part of a broadcast represents **a real offer of services having regard to the purpose of the broadcast of which the game forms part, the significance of the game within the broadcast in terms of time and of anticipated economic effects in relation to those expected in respect of that broadcast as a whole** and also to the type of questions which the candidates are asked” [emphasis added]

- 2.35 Ofcom anticipated in the 2007 Consultation that the ECJ judgement could have extremely significant implications. The judgement is discussed further in Section 4 of this current consultation.

⁷ Judgement of the Court, 18 October 2007, in Case C-195/06, reference for a preliminary ruling under Article 234 EC from the Bundeskommunikationssenat (Austria), made by decision of 4 April 2006, received at the Court on 27 April 2006, in the proceedings *Kommunikationsbehörde Austria (KommAustria), v Österreichischer Rundfunk (ORF)*

Section 3

Responses to the 2007 Consultation

Summary of responses

- 3.1 Ofcom raised a number of questions in the 2007 Consultation regarding its proposals for the separation of advertising from editorial (summarised below and discussed in more detail in Section 3 of this current consultation), and requested comments from stakeholders.
- Option 1: No change
 - Option 2: Permissible as editorial, subject to meeting strict criteria intended to limit the degree of commercial activity (this option included draft rules⁸)
 - Option 3: Permissible as editorial, subject to clear labelling (this option included draft rules⁹)
 - Option 4: Classifying all dedicated PTV services as advertising
- 3.2 Ofcom received 30 responses in total to its questions regarding separation of advertising from editorial. Of these, 11 respondents requested that their responses be kept confidential in their entirety and one requested that their identity be kept confidential. Non-confidential responses were received from: the Advisory Committee on Older and Disabled Persons ('ACOD'), Bang Media, BT, Channel 4, DNV IT Global Services, Emap Radio, Electronic Retailing Association UK ('ERA'), Five, Hammonds Solicitors, ITV plc, Million 2-1, Mobile Broadband Group, MX Telecom, NOC, Ostrich Media, Pact, Peripatos Ltd, PhonepayPlus, PromoVeritas, S4C, SBS Broadcasting Networks, Teletext Ltd, The Local Radio Company, The Premium Rate Association, The Radio Centre and UTV Radio.
- 3.3 All non-confidential responses are available on Ofcom's website. We have summarised the responses below and included Ofcom's comments where relevant.
- 3.4 As well as seeking views on Ofcom's advertising-editorial separation proposals, the consultation paper considered proposals for increased viewer and consumer protection. Stakeholders' responses on that issue were summarised in the Ofcom Statement *Participation TV Part 1: protecting viewers and consumers*, published on 19 February 2008¹⁰.

Q. Which of the [four options proposed in the 2007 Consultation] do you believe is most appropriate to ensure separation of advertising from editorial content? Please explain why.

Stakeholder comments

- 3.5 29 respondents answered this question. Of these, UTV Radio and the Radio Centre expressed no strong preference. Bang Media said that neither draft meets the requirements of industry. The majority of respondents supported Option 2.

⁸ <http://www.ofcom.org.uk/consult/condocs/participationtv/consultation.pdf>

⁹ As above

¹⁰ <http://www.ofcom.org.uk/consult/condocs/participationtv/statement/>

- 3.6 **Option 1:** Of the respondents only ITV said that it was not convinced that any change was necessary, once other detailed regulations around Participation TV were taken into account. However, it also said that of the other options, it would favour Option 2. Five thought that Option 1 was fine for quiz TV but recognised that the Broadcasting Code might need amending to cater for issues raised by some other genres. The majority of other respondents favoured a change, and favoured Options 2, 3 or 4.
- 3.7 **Option 2:** 15 respondents favoured Option 2, although some suggested changes to the option as it was set out in the 2007 Consultation. Respondents who supported Option 2 included: Emap Radio, Five, Million 2-1 Limited, The Mobile Broadband Group, Ostrich Media, Pact, PhonepayPlus, SBS Broadcasting Networks, The Local Radio Company, a premium rate services provider, a radio broadcaster and four television broadcasters. In addition, ACOD said that it favoured Option 2 or Option 4.
- 3.8 Emap Radio, Five, Ostrich Media and a radio broadcaster said that Option 2 clarified existing rules on the separation between advertising and editorial. However, MX Telecom thought that Option 2 constituted a significant amendment rather than a clarification of existing provisions. Pact favoured Option 2, but said that further clarity was needed on whether quiz TV would be an exception.
- 3.9 Bang Media said that the payment methods under Option 2, which were essentially limited to PRS, were too restrictive. A radio broadcaster who otherwise supported Option 2 also made this point. Another television broadcaster said that some elements of Option 3 should be incorporated into Option 2, including the ability to pay by credit card, which it said would limit participation to over-18s.
- 3.10 One television broadcaster said that Option 2 was the most appropriate, but also said that greater labelling of dedicated PTV channels would be welcome.
- 3.11 SBS Broadcasting Networks preferred Option 2, but said that it believed that a caller's number should be able to be used to generate further contact if the caller agreed to this.
- 3.12 **Option 3:** Six respondents, Peripatos, BT, a PRS service provider, The Premium Rate Association, MX Telecom and NOC favoured Option 3 or elements of Option 3. BT and The Premium Rate Association thought that Option 3 allowed the most flexibility and transparency for viewers and NOC thought that it would help consumers understand the nature of services offered. MX Telecom also said that this option might be useful in providing viewers with information. Peripatos said that Option 3 would allow consumers to make rational choices based on transparent information and that Ofcom should not seek to distort the market place. However, Peripatos had some reservations: it felt that the draft rules associated with the option clearly favoured non-dedicated participation TV programmes and were overly restrictive in the inability to generate further contact.
- 3.13 A service provider commented that Option 3 was unfair, given the wider freedoms that would be enjoyed by these channels. Five, ITV and Bang Media thought that this option would lead to too much information on screen. Five was also concerned that the definition of "dedicated participation programmes" was too open-ended, there was a risk of viewer confusion and this option could create new problems by extending the range of PTV programming and not clarifying the separation of advertising from editorial. Pact also said that Option 3 might raise problems over the separation principle.

- 3.14 ACOD raised a number of concerns with Option 3, including the need for accessible labelling and terms and conditions that were easy to understand.
- 3.15 **Option 4:** Channel 4, ERA UK and a television broadcaster (who responded confidentially) favoured Option 4. In addition, ACOD said that it favoured Option 2 or 4. Channel 4 said that dedicated PTV services should be regulated as advertising so that the separation of editorial and commercial content would be clear to viewers. It supported Option 4 on the basis of its understanding that dedicated PTV would be classed as advertising but other PRS services would not. ERA UK said that adult chat and psychic channels and programmes acted as no more than an advertising medium for PRS and that they should be classified as teleshopping. A television broadcaster similarly thought that such programmes exist as commercial enterprises and that Option 4 was consistent with existing legislation and the Ofcom Broadcasting Code.
- 3.16 One PRS service provider felt that Option 4 merely confirmed the current situation under Option 1 and another believed that the option would have disadvantages under BCAP regulations for live adult and psychic shows.
- 3.17 Five said that it was wholly opposed to Option 4 and said that it would have the effect of closing down its *Quiz Call* programme, which it considered was neither advertising nor teleshopping. This concern about PTV formats being classified as advertising was also echoed by another television broadcaster who said that PTV formats typically last longer than the allotted time for advertising permitted under RADA. ITV said that Option 4 would pose a very real threat to the future of dedicated PTV. The Mobile Broadband Group, Pact and a television broadcaster thought that Option 4 would restrict the range of programming that could be offered.

Ofcom's response

- 3.18 Ofcom does not believe the status quo, as represented by Option 1, is sustainable. Services and programmes wholly or mainly aimed at generating PRS revenue have increased markedly in the last few years, blurring the boundary between material screened for legitimate editorial ends and material screened essentially for its ability to attract telephony income. Some broadcasters are using PRS in programmes in such a way that does not appear compatible with the separation principle and with the spirit of the Broadcasting Code, and Ofcom recognises that the Broadcasting Code as currently drafted does not make explicitly clear what the parameters are. Some change is therefore necessary to improve transparency and consistency. Ofcom has therefore rejected Option 1.
- 3.19 Option 3 proved attractive to certain interests and Ofcom does accept, in general, the increasing importance of labelling and consumer information, particularly in newer media formats. But Option 3 would allow a significant degree of commercial activity in dedicated PTV which does not appear consistent with the separation principle, and no persuasive reasoning was put forward to overcome the continuing difficulties of separation inherent in this option. This, together with some other powerful counter-arguments outlined above, leads Ofcom to believe that Option 3 is not appropriate. This decision is reinforced by the European Court of Justice's judgement ('the ECJ judgement').
- 3.20 Options 2 and 4 represent different approaches to a similar underlying policy: that stricter rules should be introduced to the Broadcasting Code that better define the editorial-advertising boundary and, if content does not comply with such rules, then it must assume advertising status.

- 3.21 It should be noted that, subject to the BCAP Ad Code's prohibited categories and other rules, dedicated PTV services could already opt to be regulated as teleshopping. Indeed, some such services have always been regulated in this way, e.g. dating channels.
- 3.22 Ofcom remains of the view that payment for participation in programmes by means such as credit card should not be permitted. Our reasoning is set out below in paragraph 3.33.
- 3.23 Ofcom's stated preference in the 2007 Consultation was for Option 2 and we are pleased to note the majority support among respondents for that option. And in our view the ECJ judgement further indicates that definitional rules should be applied to PRS-based output to establish its position under the broadcasting law and codes. Ofcom has therefore concluded that a modified regime combining the key elements of Options 2 and 4, that is new rules which clarify the boundaries between editorial and advertising, is appropriate. Those licensees unable or unwilling to comply with the proposed new rules must therefore be regulated as advertising – teleshopping, in the case of television content – or, if prohibited from advertising, must cease transmission.
- 3.24 In light of the ECJ judgement, however, we have concluded that the tests that should be applied must be more exacting than those consulted on previously. For this reason, we are seeking stakeholders' comments on the proposed new Broadcasting Code rules ('the proposed rules').

Q. Do you have any comments on the draft new rules and guidance in respect of Options 2, 3 and 4? Please support your comments with adequate explanation and provide drafting proposals as appropriate.

Stakeholder comments

- 3.25 Most of the responses to this question focussed on the drafting provided in respect of Option 2.
- 3.26 Peripatos said that the draft rules proposed under Option 2 should be amended to take account of technology changes, what happens to phone lines when off air, interference with consumer choice, the negative economic impact on broadcasters and the issue of anti-competitiveness. S4C thought that the draft rules were too vague.
- 3.27 Five said that the reference to "premium rate numbers (and their equivalents)" in draft Rule 10.9 as proposed under Option 2 needed clarification. Another television broadcaster suggested an addition to Rule 10.9 to the effect that premium rate numbers will normally be regarded as products or services except where they do not become unduly prominent and their use is editorially justified.
- 3.28 Five and another TV broadcaster said that "by the same process" in draft Rule 10.10 needed clarification. Five also said that the wording regarding acceptable means of charging viewers and listeners was unclear and did not cover existing practices.
- 3.29 Five said that draft Rule 10.10 should be clarified to cover involvement during and after a live programme and that guidance should not include a ban on credit and debit cards. ITV, The Local Radio Company, UTV Radio, Million 2-1, a radio broadcaster, the Radio Centre and three television broadcasters also thought that Ofcom should not limit methods of payment. The Mobile Broadband Group

highlighted Payforit, a telephony based payment mechanism for mobiles that could be used for PTV services.

- 3.30 ITV provided some draft rules to take account of further contact in the form of confirmation messages. A radio broadcaster, the Radio Centre, UTV Radio and Million 2-1 were also concerned about the guidance advising against generating further contact.
- 3.31 SBS Broadcasting Networks said that draft Rule 10.11 should be reviewed to ensure that the Broadcasting Code does not need to be followed where it is inconsistent with local regulations.
- 3.32 A TV broadcaster suggested an addition to the draft guidance relating to the length of time that a premium rate number should be on screen and the editorial justification of on-screen references.

Ofcom's response

3.33 In this current consultation, Ofcom is now proposing new Broadcasting Code rules and guidance and seeking stakeholders' comments on them. The proposed rules as set out in Section 4 follow the judgement of the ECJ in October 2007. They are therefore clearer and more comprehensive than those set out in the 2007 Consultation and do take account of a number of points raised by stakeholders. Of the substantive comments received on the earlier draft rules, Ofcom's summary view is that:

- Changes in technology can be accommodated, if necessary, by code and guidance amendment.
- Consumer choice in the area of dedicated PRS services is very much wider than their provision by television and radio, particularly in respect of adult chat and psychic services.
- The proposed rules and guidance tighten the descriptions of communications means that would be acceptable, and are more clearly drafted than the wording previously proposed under Option 2 in the 2007 Consultation.
- Ofcom 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's current acceptance of the use of revenue-share telephony such as PRS in editorial is itself an exception to the general principle that editorial material should not promote products or services. In allowing this exception, Ofcom recognises both the natural desire of audiences to communicate with broadcasters and the universal nature of telephony (including mobile voice, SMS and MMS) as a public communications medium. Therefore licensees should in this context regard revenue-share telephony as an aspect of a universally available communications utility, not as just one of many means of transferring money from viewers to themselves. If licensees were to charge for participation by means of credit card, for example, that would give the clear impression that audiences were buying a service of some kind, rather than simply seeking to take part in editorial content. In addition, the use of PRS as both a communication method and charging mechanism is tightly regulated.
- Ofcom notes the comments about the promotion of PRS in programmes that then generate further contact. However, we remain of the view that this may raise

issues under the Broadcasting Code. We would of course need to consider the individual facts in a particular case.

- Where PhonepayPlus' rules for premium rate service providers do not apply, e.g. where a telephony service is not caught by the formal definition of a 'controlled premium rate service', Ofcom would not require broadcasters to ensure compliance with them. However, the general principles of good practice embodied in PhonepayPlus rules would offer guidance to Ofcom licensees operating in other territories.

Stakeholder comments

- 3.34 Some respondents also commented on the drafting proposed under Option 3.
- 3.35 With reference to draft Rule 10.19, MX Telecom thought that the reference to reading the charging information carefully in the text statement was likely to confuse viewers. NOC said that further discussion on the content and presentation of the on screen message was needed.
- 3.36 MX Telecom felt that draft Rule 10.20 was "entirely inappropriate" and NOC said that it was unduly restrictive. A TV broadcaster said that by removing the words "a dedicated participation programme may also promote additional services" the separation principle would remain intact.
- 3.37 Ofcom also received comments in respect of Option 4.
- 3.38 ERA commented that there were no draft rules for its preferred option, Option 4, and provided some draft rules and guidance which would remain the same as that for Option 2, but with one addition relating to references to on-screen reference to premium rate numbers. A television broadcaster who also preferred Option 4 commented that there were no draft rules provided under this option.

Ofcom's response

- 3.39 Having considered the responses and the ECJ judgement, Ofcom has concluded that Option 3 is unlikely to be consistent with the separation principle.
- 3.40 The proposed rules set out in this current consultation are, in Ofcom's view, adequate to distinguish between editorially justifiable and unjustifiable use of PRS. Where material would be categorised as advertising under the proposed rules, the advertising codes and guidance would apply, including guidelines on matters such as the prominence of on-screen text.
- 3.41 Ofcom also notes the comments about the absence of drafting in respect of Option 4. The question posed in the 2007 Consultation referred in error to draft rules in respect of Option 4. This current consultation now includes proposed new rules, together with draft guidance.

Do you agree that Option 2 clarifies the existing provisions of the Broadcasting Code and therefore should not be limited to dedicated PTV only, but should apply to all editorial content (on both television and radio) which invites viewers to pay to take part? Please give reasons.

Stakeholder comments

- 3.42 24 respondents answered this question. Of these, six respondents, the Premium Rate Association, Ostrich Media, PhonepayPlus, The Local Radio Company, a premium rate service provider and NOC agreed with the question. A further ten respondents (Peripatos, Bang Media, Five, a radio broadcaster, ITV, Million 2-1, Pact, the Radio Centre, UTV Radio and a TV broadcaster) agreed subject to concerns outlined in previous questions.
- 3.43 ERA UK favoured Option 4 and thought that this option, subject to ERA UK's comments, should apply to all use of PRS in editorial content. A television broadcaster who favoured Option 4 also thought that in principle the rules should extend to all PRS use in programmes.
- 3.44 Six respondents disagreed, including ACOD, a PRS service provider, MX Telecom, SBS Broadcasting Networks, and two television broadcasters. One television broadcaster said that the Broadcasting Code provided adequate protection. ACOD said that when a service is beyond the scope of the actual editorial content of the programme, it should be regarded as commercial in nature and hence classified as advertising or teleshopping. MX Telecom thought that Option 2 was inappropriate and SBS Broadcasting Networks thought that Option 2 should only apply to dedicated PTV. The PRS service provider disagreed because it thought that Option 3 was more appropriate.

Ofcom's response

- 3.45 We agree with the thrust of the responses that the Broadcasting Code should be amended to include strict new rules on what is acceptable use of PRS in programmes. The proposed rules are not limited to dedicated PTV but would apply to any broadcast content which invites viewers to participate via PRS. This will help ensure a level playing field for all broadcasters using PRS as a means of audience interaction. We would also again emphasise that the proposed rules are stricter than those set out under Option 2.

Has Ofcom correctly identified, in Section 6 and the Impact Assessment in Annex 7, the various impacts arising from each option for dedicated PTV? Again, please give reasons.

- 3.46 BT said that consideration should be given to the impact that the proposals might have on restricting new formats.
- 3.47 MX Telecom said that the commercial impact of prohibiting off-screen interaction and further contact had been overlooked. It said that responsible marketing companies should be allowed to market relevant services to viewers, and that preventing this would stifle innovation and diminish the overall user experience. NOC said that its members were also concerned about restrictions on marketing to viewers.
- 3.48 Five said that there was a lack of assessment of the increased revenue raising potential of the new regime suggested by Option 3.
- 3.49 Million 2-1 was concerned that the roles of PhonepayPlus and the Gambling Commission had not been assessed. It was concerned that the number of regulators in this area could lead to confusion.

- 3.50 MX Telecom said that the editorial value that consumers derive from dedicated PTV services has been understated. Ostrich Media stressed the importance of drawing a distinction between two types of PTV: those whereby the viewers interact with the programme through voting, answering questions or speaking on air and therefore influence the programme's content and those where there is no such interaction and influence.
- 3.51 NOC said that the generally accepted value of UK PRS for 2006 was £1.2bn rather than £1.6bn as stated in A7.22 of the 2007 Consultation document. It also said that it expected the outturn for 2007 to be of the order £0.8bn – £0.9bn and that the level of new entrants into the PRS market was very low in 2007.

Ofcom's response

- 3.52 Ofcom does not believe that innovation would have been affected by any of the four options offered in the 2007 Consultation, or by the new proposals in this consultation. If new payment mechanisms emerge that Ofcom considers to be acceptable in participation-based content, then Ofcom will review the Broadcasting Code accordingly.
- 3.53 Ofcom's view remains that marketing messages sent to viewers who participate in programming via PRS tend to indicate that the broadcaster's intention is commercial rather than driven by editorial purposes. The proposed guidance therefore explains that marketing messages would tend to be considered to be inconsistent with the proposed rules.
- 3.54 We have already explained our reasons for discounting Option 3; it is therefore not relevant to consider in further detail possible financial benefits to broadcasters under this option.
- 3.55 Ofcom has recently revised the governance arrangements for PhonepayPlus and expects the two bodies to be able to work more closely and more effectively. The responsibilities and policies of the Gambling Commission are unaffected by the subject of the consultation.
- 3.56 Ofcom notes the argument that some viewers may consider certain genres of content predicated on the promotion of PRS to be entertaining. However, the entertainment value of editorial and advertising is just one element in any decision about how such content should be classified: many spot ads are funny, engaging and so on, but their status as advertising is not in doubt. However, Ofcom agrees that some content uses PRS in a way that is editorially justified, and other content does not. The proposed rules are intended to draw this distinction more clearly than has previously been the case. However, it is important to note that, under the proposed rules, contribution to editorial content is not the only relevant consideration.
- 3.57 Figures and estimates in the PRS market do vary, but Ofcom is confident that its assessments are sufficiently robust. In any event, Ofcom is fully aware that Options 2 and 4, as set out in the 2007 Consultation, and the proposed rules set out in this current consultation would all have a significant impact on broadcast services whose business models are clearly predicated on the use and promotion of PRS. However, the fundamental fact remains that advertising must be kept separate from editorial content. Ofcom has concluded that the Broadcasting Code must be amended to clarify what is acceptable use of PRS in programmes and what is not, in order to ensure broadcasters comply with the separation principle.

Section 4

New Broadcasting Code rules

Ofcom's conclusion

- 4.1 Having carefully considered both the stakeholder responses to the 2007 Consultation and the judgement of the European Court of Justice ('ECJ'), Ofcom has concluded that new Broadcasting Code rules are required to ensure that programmes only use PRS where there is sufficient editorial justification and are therefore not simply vehicles for the promotion of what is essentially a commercial, revenue-generating service.
- 4.2 We are now proposing that the Broadcasting Code be amended to include new rules based on the factors identified by the ECJ as relevant ('the proposed rules').
- 4.3 The proposed rules are a stricter version of the draft rules suggested as part of Option 2 as set out in the 2007 Consultation. Those previous draft rules focussed on method of payment and the need to ensure direct contribution to editorial content. The proposed rules now go further than this and cover undue prominence, the actual content of the programme and the purpose of the programme.
- 4.4 A key point to note is that, under Option 2, quiz TV would probably not have needed to change in order to remain as editorial. However, it is now clearly caught under the proposed rules; any quiz TV content as currently constructed would therefore need to change fundamentally in order to remain as editorial rather than being classified as teleshopping.
- 4.5 In practice, Ofcom's decision to amend the Broadcasting Code is similar in terms of impact to Option 4 in the 2007 Consultation, i.e. if content did not comply with the proposed rules, it would not only be in breach of the Broadcasting Code but might also need to be reclassified as teleshopping. It would therefore need to comply with the BCAP Ad Code.
- 4.6 This would mean adult chat TV and psychic TV as currently being transmitted could no longer be broadcast. Moreover, because of limits on advertising minutage, the public service broadcasters would no longer be able to broadcast quiz TV content. The effects of the proposed rules are discussed in detail below in paragraphs 4.15 to 4.31.

Proposed rules

- 4.7 The ECJ judgement said that quiz TV content is covered by the definition of teleshopping if it involves "a real offer of services". The factors that it identified as relevant were:
 - the purpose of the broadcast of which the game forms part;
 - the significance of the game within the broadcast in terms of time;
 - the significance of anticipated economic effects in relation to those expected in respect of that broadcast as a whole; and
 - the type of questions which the candidates are asked.

- 4.8 Ofcom considers that the ruling is extremely significant for all PTV involving the promotion of PRS. The principles of the case are broad enough to apply to other genres of dedicated PTV besides quiz TV insofar as they raise the same or similar consumer protection issues. If it is possible for a quiz show to represent “a real offer of services”, then it follows that other genres of PTV may – depending on the particular facts – also represent a “real offer of services” and therefore in fact be teleshopping. Psychic TV and adult chat TV clearly offer the provision of services in return for payment.
- 4.9 Ofcom considers the first three factors identified by the ECJ as being absolutely key to the question of whether broadcast content comprises “a real offer of services”. The ECJ’s final point about the type of questions asked is a much narrower point specific to quiz TV.
- 4.10 It would not be sufficiently clear to simply replicate the ECJ’s factors (which were set out in the context of a detailed judgement) word for word in the Broadcasting Code. Ofcom has therefore taken a purposive approach in interpreting the factors with a view to ensuring the proposed rules are as clear as possible.
- 4.11 As with the draft rules under Option 2 in the 2007 Consultation, Ofcom has decided that the proposed rules should make clear that only limited forms of payment – essentially revenue-sharing telephony – are acceptable in participation-based programming. Our reasoning is explained in paragraph 3.33 of this consultation. Broadcasters can of course invite participation by means that cost no more than standard carriage, e.g. by email, ordinary post or ‘ordinary’ phone calls. This would avoid the questions raised under the separation principle by revenue-raising mechanisms such as PRS.
- 4.12 The proposed rules make absolutely clear the need to ensure direct contribution to editorial content.
- 4.13 In addition, Ofcom has decided to amend the definition of ‘programme-related material’ because of the potential for inconsistency and confusion caused by the current wording, and to update the rules to refer to PhonepayPlus (formerly ICSTIS).
- 4.14 The proposed new rules are set out below, with changes to the existing wording indicated for ease of reference. Also provided is draft explanatory guidance to be added to Ofcom’s non-binding guidance on the Broadcasting Code.

Proposed amendments to Section 10 (Commercial References) of the Broadcasting Code

Programme-related material

10.6 Programme-related material may be promoted in programmes only where it is editorially justified.

10.7 The broadcaster must retain responsibility for all programme-related material.

10.8 Programme-related material may be sponsored, and the sponsor may be credited when details of how to obtain the material is given. Any credit must be brief and secondary, and must be separate from any credit for the programme sponsor.

Meaning of “programme-related material”:

These are products or services that are both directly derived from a specific particular programme and specifically intended to allow listeners or viewers to benefit fully from, or to interact with, that programme.

Premium rate numbers

10.9 Where a broadcaster invites viewers or listeners to take part in or otherwise interact with its programmes, it may only charge for such participation or interaction by means of premium rate telephone services or other telephony services based on similar revenue-sharing arrangements.

~~40.9~~ 10.10 Premium rate numbers services, and other telephony services based on similar revenue-sharing arrangements, will normally be regarded as products or services, and must therefore not appear in programmes, except where:

- they form part of are both directly derived from a particular programme and enable viewers or listeners to participate directly in or contribute directly to the editorial content of the programme; or
- they fall within the meaning of programme-related material (see above).

10.11 When a premium rate service (or such other telephony service as described in Rule 10.9) is included within a programme to allow viewers or listeners to participate or otherwise interact with the programme, broadcasters must ensure that:

- the service is directly derived from the particular programme;
- the service enables viewers or listeners to participate directly in or contribute directly to the editorial content of the programme;
- the service is not given undue prominence within the programme;
- 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.

~~40.10~~ 10.12 Any use of premium rate numbers or services must comply with the Code of Practice issued by the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS) PhonepayPlus.

Guidance to be added to existing guidance on Section 10

Where ‘programme’ content seeks to promote and use premium rate telephone services (‘PRS’) in a way that is not consistent with the rules in Section 10, then – in addition to being in breach of the Code and depending on the individual circumstances – it may be that such content is in effect advertising (more specifically in the case of television, teleshopping, that is, long-form advertising containing direct offers). It is therefore subject to the relevant advertising content and scheduling codes for that medium.

Rule 10.9

Where broadcasters choose to charge viewers or listeners for participation in programmes over and above the normal costs of communication, e.g. ordinary post or standard

telephony, then the only permitted means of charging for participation is by PRS (including via the red button) or similar telephony applications, e.g. 0870 and 0871 services.

Other methods of payment, such as by credit card or via a special account, are acceptable only where viewers or listeners are buying programme-related material, e.g. a DVD, not where they are seeking to participate in or otherwise interact with a programme.

In the context of this rule and Rule 10.11, interaction does not refer to programme enhancements, usually accessed by pressing the red button, that are part of the platform architecture (e.g. additional information about the programme, action replays, or different camera angles).

Rule 10.11

Rule 10.11 reflects a judgement by the European Court of Justice ('ECJ') on 18 October 2007¹¹, where the ECJ ruled that:

“a broadcast or part of a broadcast during which a television broadcaster offers viewers the opportunity to participate in a prize game by means of immediately dialling a premium rate telephone number, and thus in return for payment, is covered by the definition given by Article 1(f) of teleshopping if that broadcast or part of a broadcast represents a real offer of services having regard to the purpose of the broadcast of which the game forms part, the significance of the game within the broadcast in terms of time and of anticipated economic effects in relation to those expected in respect of that broadcast as a whole and also to the type of questions which the candidates are asked”

Whilst the ECJ's ruling was made in the course of proceedings between the Austrian communications authority and an Austrian broadcaster regarding a particular quiz show broadcast by that broadcaster, Ofcom considers that the ruling is of wider significance. If it is possible for a quiz show, which invites viewers to call a premium rate number for a chance of answering a question and winning a prize, to represent “a real offer of services”, then it follows that other genres of broadcast content predicated on the use and promotion of premium rate services may – depending on the particular facts – also represent a “real offer of services”.

Broadcasters using premium rate numbers must take careful consideration of each of the factors set out in Rule 10.11. These factors inevitably overlap to some extent. None of the factors should be considered in isolation although, depending on the particular facts, some may outweigh others. One of the factors refers to undue prominence; see also Rule 10.4.

Each case must be assessed on its individual facts and Ofcom is not able to provide a definitive view here on whether a so-called ‘programme’ is in fact advertising (in the case of television, teleshopping) or editorial. Ofcom could only provide such a view following a formal investigation. However, broadcasters may find the following examples helpful in their consideration of the factors set out in Rule 10.11; again, these should not be considered in isolation. References in these examples to PRS should be taken as also referring to similar revenue-sharing telephony services:

¹¹ Judgement of the Court, 18 October 2007, in Case C-195/06, reference for a preliminary ruling under Article 234 EC from the Bundeskommunikationssenat (Austria), made by decision of 4 April 2006, received at the Court on 27 April 2006, in the proceedings *Kommunikationsbehörde Austria (KommAustria), v Österreichischer Rundfunk (ORF)*

Considerations that would tend to suggest compliance with Rule 10.11

- The PRS promoted within the programme clearly provides viewers with a genuine opportunity to participate in, contribute to or otherwise influence editorial content, e.g. entry to a competition, voting, on-air display of text messages, on-air discussion in a magazine-format show.
- References 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.
- PRS is clearly only one element of the broadcast content, e.g. as is often the case in a studio-based game show, a magazine-format show, a sports discussion show, or a reality show.
- On calling the PRS number promoted in the programme, viewers are not given advertising information or options other than participation in the programme.
- PRS calls are charged at the lower end of the range of PRS charges permitted.
- The programme is not primarily or wholly funded by revenues generated by PRS. For clarity, in radio, this refers to the overall programming in which the item in question appears. We also recognise that on radio some shorter features may be primarily or wholly funded by PRS (or similar revenue-sharing telephony services).

Considerations that would tend to suggest a breach of Rule 10.11

- The PRS does not clearly contribute to editorial content, e.g. in a chat-based service where all or most of viewers' calls are neither audible nor discussed on air.
- The programme appears in effect to be a promotional vehicle for the PRS. In particular, the PRS is promoted with a degree of prominence not clearly justified by its contribution to editorial content; there are excessively frequent calls to action, visual or oral; or a significant proportion of airtime is given to promoting the PRS or to featuring the PRS interaction.
- On calling the PRS number promoted in the programme, the caller is presented with advertising messages or with options other than participation, e.g. to purchase a product or a service, or is subsequently sent marketing messages.
- The programme includes advertising-type messages about the PRS, e.g. 'cheaper calls', 'happy hour', '20% cheaper'.
- PRS calls are charged at the higher end of the range of PRS charges permitted.
- The programme is primarily or wholly funded by revenues generated by PRS, rather than by, for example, advertising revenues. For clarity, in radio, this refers to the overall programming in which the item in question appears.
- In the case of a quiz or competition, the question or puzzle appears to be promoting a product or service. This is a separate consideration to sponsorship or prize donation.

Broadcasters should also note that particular care must be taken with pre-recorded content which encourages viewers or listeners to participate, as it will often be unclear how viewers or listeners are in fact able to contribute to or influence that content.

In content predicated on inviting audiences to call presenters to 'chat' or seek advice, the use of 'off-screen' premium rate services, e.g. call centres or operatives described as being 'at home', is likely to be in breach of Rule 10.11, taking into account all the factors set out under that rule. Ofcom also considers it unlikely that such off-screen premium rate services are 'programme-related material' ('PRM') as defined in the Broadcasting Code. In any event, promotion of PRM is strictly regulated under the Code; continual promotion throughout a programme is unlikely to be acceptable.

Effect of proposed new rules

- 4.15 Ofcom intends that, before implementing the proposed rules, it would allow relevant licensees an appropriate opportunity to make changes as necessary, e.g. to change the format of their service to comply as editorial content under the Broadcasting Code or – if appropriate – to reconfigure their service as teleshopping. If licensees continue to broadcast content that either does not comply with the Broadcasting Code or is incompatible with the BCAP Ad Code, Ofcom will take appropriate enforcement action, e.g. revocation of licence.
- 4.16 The 2007 Consultation included a detailed impact assessment of new Broadcasting Code rules and of classifying content predicated on the promotion of PRS as advertising¹². Ofcom has now decided that the Broadcasting Code needs to be amended; the implications of the proposed rules are set out below.

Mainstream programmes

- 4.17 Programmes that are clearly editorially driven, e.g. *Big Brother*, *I'm A Celebrity Get Me Out Of Here*, would be likely to comply with the proposed new Broadcasting Code rules above ('the proposed rules') and would therefore remain classified and regulated as editorial under the Broadcasting Code. However, under the proposed rules, even where calls and texts to the PRS clearly influenced editorial content, broadcasters would need to take care to comply with the other requirements of the the new rules, e.g. they would need to avoid unduly prominent references to the PRS.

Public service broadcasters

- 4.18 Unlike other channels, the commercial public service broadcasters ('PSBs'), i.e. the Channel 3 licensees, Channel 4 and Five, do not have a daily teleshopping allowance of three hours in addition to their advertising minutage. They may run teleshopping windows between midnight and 6am, but only at the expense of spot advertising time.
- 4.19 Subject to the outcome of this consultation and the responses received, because of these advertising restrictions (set out in Ofcom's Rules on the Amount and Distribution of Advertising or 'RADA'¹³), the proposed rules would mean that the commercial PSBs would no longer be able to broadcast quiz TV (or indeed any other dedicated PTV content) unless they changed that content to ensure that it complied

¹² <http://www.ofcom.org.uk/consult/condocs/participationtv/consultation.pdf>

¹³ <http://www.ofcom.org.uk/tv/ifi/codes/advertising/>

with the proposed rules and could therefore be broadcast as editorial under the Broadcasting Code.

- 4.20 In practice, the only content currently being broadcast by the PSBs that would appear to require reclassification as teleshopping is *Quiz Call* on Five (four to five hours three times a week). Under the proposed rules, Five could no longer broadcast *Quiz Call*; Five US could continue to broadcast it, but only up to a maximum of three hours per day.
- 4.21 However, this could change. Ofcom has indicated that it may consult later in the year on revisions to the teleshopping rules in RADA¹⁴. One of the options under consideration would allow the PSBs to broadcast teleshopping between midnight and 7am. Separately, a further option would remove the three hour limit on other licensees so that they could broadcast as much teleshopping as they wished.
- 4.22 Traditional viewer competition formats (e.g. the phone-in element of *Who Wants To Be A Millionaire*) would be likely to comply with the proposed rules and would therefore not need to be reclassified as teleshopping.

Adult chat TV

- 4.23 Adult chat TV blocks of programmes and channels as currently broadcast would not comply with the proposed rules, if adopted. Also, the BCAP Ad Code prohibits the advertising of adult chat phone services, except on encrypted channels¹⁵. Therefore, under the proposed rules, in order to remain on air, the content would need to:
- change radically so that it complied with the proposed rules and could therefore be broadcast as editorial content under the Broadcasting Code; or
 - cease promoting adult chat phone services and instead promote a telephony service not prohibited from advertising under the BCAP Ad Code on an unencrypted channel, i.e. non-adult chat phone services; or
 - become an encrypted television service – the BCAP Ad Code does allow adult chat phone services to be advertised on encrypted adult entertainment channels. We 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.

Psychic TV

- 4.24 Similarly, psychic TV blocks of programmes and channels in their current form would not comply with the proposed rules if adopted. In addition, the BCAP Ad Code prohibits the advertising of psychic practices¹⁶. Therefore, to remain on air, psychic TV content would need to change radically so that it complied with the proposed

¹⁴ <http://www.ofcom.org.uk/consult/condocs/rada/>

¹⁵ 11.1.2 of BCAP Ad Code: “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.”

¹⁶ 10.3 of BCAP Ad Code: “With very limited exceptions, advertisements for products or services concerned with (a) the occult or (b) psychic practices are not acceptable”

rules and could therefore be broadcast as editorial content under the Broadcasting Code.

Quiz TV

- 4.25 Quiz TV in its current form would not comply with the proposed rules. It would therefore need to either:
- change radically so that it complied with the proposed rules and could therefore be broadcast as editorial under the Broadcasting Code; or
 - be reclassified as teleshopping and regulated under the BCAP Ad Code. There is no prohibition under the BCAP Ad Code on the advertising of quizzes or puzzles, so – subject to complying with advertising minutage restrictions – it could remain on air.
- 4.26 In practice, quiz TV has declined significantly over the last 12 months. At this time, only Five appears to be broadcasting quiz TV blocks (*Quiz Call*, also simulcast on Five US) and there are no standalone quiz TV channels.

Other PRS-based content

- 4.27 The proposed rules would apply to all content involving participation by PRS. Certain genres (discussed above) currently use PRS in such a way and to such an extent as to be clearly incompatible with the proposed rules for programmes. However, other potentially problematic uses of PRS may emerge.
- 4.28 For example, Ofcom notes that some music video TV channels are increasingly promoting superimposed text-based PRS applications, similar to those available as mobile phones downloads, e.g. light-hearted predictions and romantic compatibility tests. Where such promotion is unduly prominent or the applications do not clearly contribute to editorial content, this has the potential to raise concerns under the Broadcasting Code, both as it stands and under the proposed rules.

Radio

- 4.29 Section 10 of the Broadcasting Code, which sets out rules to ensure that advertising and editorial content are kept separate, applies to radio and television equally. Whilst radio is not subject to advertising minutage restrictions, it is important that advertising on radio remains distinct from editorial content.
- 4.30 This document focuses upon television because there are clear examples of television channels and programmes involving PRS that raise issues under the separation principle. However, there is some PRS-based quiz content on radio, and it is possible that similar concerns regarding the promotion of PRS in radio programming could arise in future. Also, Ofcom believes that, in addition to PRS, the proposed rules should apply to other telephony services based on similar revenue-sharing arrangements, e.g. 084 and 087 services. Radio phone-ins often involve such telephone services.
- 4.31 Ofcom therefore intends that the proposed rules should apply to radio as well as television. If radio content should use and promote PRS in a manner inconsistent with the proposed rules, then it may be considered to be advertising. It would then need to be clearly separated from programming and to comply with all the other requirements of the BCAP Radio Advertising Standards Code.

Advertising Standards Authority

- 4.32 The ASA could potentially end up regulating as teleshopping at least some PTV services that are currently regulated as editorial, e.g. quiz TV, encrypted adult chat TV and non-adult chat TV.

Consultation questions

- 4.33 Having considered all the regulatory issues, including the ECJ judgement, Ofcom has concluded that the Broadcasting Code must be amended to clarify what is acceptable use of PRS in programmes and what is not, in order to ensure broadcasters comply with the separation principle.
- 4.34 Ofcom is now seeking comments from stakeholders on the proposed rules and explanatory guidance.

Q1. 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.

Q2. Do you have any comments on the draft explanatory guidance set out in Section 4? Please provide drafting suggestions where appropriate.

Q3. Do you agree that the proposed rules should apply to radio as well as to television?

Section 5

Regulatory background

Ofcom's statutory duties

- 5.1 In discharging its functions under the Communications Act 2003 ('the Act'), Ofcom's principal duty is to further the interests of citizens and consumers¹⁷. We are required to secure a number of other matters including maintaining a sufficient plurality of providers of different television services¹⁸ and the availability throughout the UK of a wide range of television services¹⁹.
- 5.2 As part of its duties in relation to broadcasting, Ofcom is responsible for setting broadcast standards for the content of programmes. The relevant objectives²⁰ to be secured by these standards include:
- that persons under the age of eighteen are protected;
 - to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material; and
 - to prevent the inclusion of advertising which may be misleading, harmful or offensive.
- 5.3 In setting standards, Ofcom must have regard to a number of matters²¹ including:
- the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes;
 - the likely size and composition of the potential audience;
 - the likely expectation of the audience as to the nature of a programme's content and the extent to which it can be brought to the attention of potential members of the audience; and
 - the desirability of maintaining the independence of editorial control over programme content.
- 5.4 Ofcom must secure such other standards applicable to particular descriptions of programmes as may be appropriate for securing the above objectives²². In addition in securing the objectives, Ofcom may include provisions prohibiting advertisements and methods of advertising in particular circumstances²³.
- 5.5 In setting standards Ofcom must take account of its obligations under the Television Without Frontiers ('TWF') Directive²⁴ which remains in force pending transposition of

¹⁷ section 3(1) of the Act

¹⁸ section 3(2)(d)

¹⁹ section 3(2)(e)

²⁰ section 319(2)

²¹ section 319(4)

²² section 319(5)(b)

²³ section 321(1)(b)

²⁴ Directive (89/552/EEC) as amended by (97/36/EC)

amendments made by the Audiovisual Media Services ('AVMS') Directive²⁵. Ofcom may include conditions in relation to its broadcasting licences (including any television licensable content service or any digital television programme service) for securing compliance with international obligations²⁶.

The Co-regulatory System of Broadcast Advertising Regulation

- 5.6 The Act gives Ofcom specific duties towards the regulation of advertising. However, whilst Ofcom retains ultimate responsibility for such regulation, it has entered into a co-regulatory arrangement with the Advertising Standards Authority ('ASA') (enabled by a statutory instrument²⁷ and a Memorandum of Understanding) under which the ASA is given responsibility for operating the broadcasting advertising standards system for all types of broadcast advertising, including teleshopping and self-promotional channels. (The ASA had previously been responsible for non-broadcast advertising alone.²⁸) Ownership of the codes, guidance notes and other rules also passed to the Broadcast Committee of Advertising Practice ('BCAP'), with Ofcom retaining a right of approval.
- 5.7 Rules on the amount and distribution of advertising, on programme sponsorship and on the proscription of political advertising remain with Ofcom. The powers of statutory sanction (including fines and the removal of licences) created by the Act are also reserved to Ofcom.
- 5.8 The co-regulatory regime contains all the same regulatory instruments and penalties as did the system when operated solely by Ofcom.
- 5.9 A clear and logical division therefore exists for the roles of Ofcom and ASA in ensuring protection for viewers across programming (editorial) and advertising: editorial and sponsorship content is overseen by Ofcom, advertising by the ASA.

European legislation

- 5.10 It is a fundamental principle of European broadcasting regulation that advertising and editorial, that is programming, must be kept separate. This ensures that viewers understand when they are being sold to, that appropriate regulatory safeguards are in place, that editorial integrity is protected and that a broadcaster's maximum daily advertising minutage is properly calculated.
- 5.11 Article 10 (1) of the TWF Directive provides:

²⁵ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC

²⁶ section 335 of the Act

²⁷ The Contracting Out (Functions relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004

²⁸ To accommodate their new role in regulating broadcast advertising, the pre-existing, self-regulatory ASA, its industry arm the Committee of Advertising Practice (CAP), and the ASA's separate treasurer, the Advertising Standards Board of Finance (ASBOF) were complemented by broadcast equivalents: ASA(B), BCAP and BASBOF. However, the system is designed to work as a unitary function as far as possible. The councils of ASA and ASA(B) have most members in common, and the memberships of CAP and BCAP, and of ASBOF and BASBOF, also overlap. ASA, ASA(B), CAP and BCAP share a secretariat. For simplicity, we refer in this document just to ASA and BCAP.

“Television advertising and teleshopping shall be readily recognizable as such and kept quite separate from other parts of the programme service by optical and/or acoustic means.”

- 5.12 Article 18 limits the amount of transmission time that may be used for advertising and teleshopping.
- 5.13 ‘Television advertising’ is defined in Article 1(c) as “any form of announcement broadcast whether in return for payment or for similar consideration or for broadcast for self-promotional purposes by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment.”
- 5.14 ‘Teleshopping’ is defined in Article 1(f) as “direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.”
- 5.15 The TWF Directive also refers to ‘programmes’ but does not define the term.
- 5.16 The new AVMS Directive was adopted in December 2007. This revises and amends the current TWF Directive; Member States have two years for national implementation. The AVMS Directive creates an opportunity to liberalise the advertising rules for broadcasting services. However, the separation principle remains substantially unchanged. The new Article 10 of the AVMS Directive provides:
- “Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.”
- 5.17 In addition, the definition of television advertising and teleshopping remain unchanged. They are now presented as two of the four categories under the new concept of ‘audiovisual commercial communications’ (the others being sponsorship and product placement).²⁹
- 5.18 In addition to reflecting the requirements of the Act and the TWF Directive, the Broadcasting Code has been drafted in the light of the Human Rights Act 1998 and the European Convention on Human Rights (‘the Convention’) - in particular, the right to freedom of expression, as expressed in Article 10 of the Convention, encompasses the audience’s right to receive – and the broadcaster’s right to broadcast - creative material, information and ideas without interference but subject to restrictions prescribed by law and necessary in a democratic society.
- 5.19 Article 18 of the TWF Directive has also been amended.
- 5.20 Ofcom’s Broadcasting Code, in light of its statutory duties, also requires that the separation principle applies to radio.

²⁹ Article 1(i) and (l)

Types of service that may be provided under a TV broadcasting licence

- 5.21 A service will be licensable if it falls within one of the statutory licence definitions in the Act. Ofcom can only license a service if the provider of that service ('the broadcaster') falls under UK jurisdiction in accordance with the TWF Directive.
- 5.22 Television services require different licences depending on delivery platform. Put simply, Television Licensable Content Services ('TLCS') licences are for services made available using either satellite, an electronic communications network (such as cable), or a radio multiplex. Services made available on a television multiplex (digital terrestrial television) are licensed as Digital Television Programme Services ('DTPS') or Digital Television Additional Services ('DTAS'). Channels 3, 4, 5 and Public Teletext hold individual licences.
- 5.23 Ofcom recognises three types of service which can be provided under a TLCS, DTPS or DTAS licence: editorial, teleshopping or self-promotional (these latter two are specific types of advertising). In each case, the licence obliges the licensee, among other matters, to comply with the Rules on the Amount and Distribution of Advertising ('RADA' - discussed further below), the Broadcasting Code and the BCAP Advertising Code. Ofcom's broadcast licensing guidance notes describe these three types of service as set out below.
- 5.24 An editorial service is a 'normal' programme service, with conventional programme material and scheduled advertising breaks. The majority of television channels fall within this category. Editorial services, with the current exception of the public service broadcasters, may also broadcast up to three hours of 'teleshopping' content. Teleshopping is a particular form of advertising involving the broadcast of direct offers to the public with a view to the supply of goods or services in return for payment. As explained in paragraph 4.21 of this consultation, Ofcom is considering possible changes to the rules on how much teleshopping may be shown on public service broadcasters' channels and on other channels³⁰.
- 5.25 A teleshopping service is a service which consists entirely of teleshopping. For the avoidance of doubt, teleshopping services may not broadcast material (other than permitted advertising) which does not contain direct offers to the public. A teleshopping service may therefore not contain any conventional programme elements such as news, sport, films, documentaries or drama, etc.
- 5.26 A self-promotional service is a service which consists entirely of self-promotional material. Self-promotional material is a particular kind of advertising in which the broadcaster promotes its own products, services or channels. Spot advertising and teleshopping for other products and services are permitted on self-promotional services up to the same limits as for editorial services. For the avoidance of doubt, self-promotional services may not broadcast material (other than permitted advertising and teleshopping) which does not promote the broadcaster's own goods or services. A self-promotional service may not therefore contain any conventional programme elements such as news, sport, films, documentaries or drama, etc.
- 5.27 If broadcasters wish to change the nature of their service, e.g. from teleshopping to editorial, or the name of the service the change must be agreed with Ofcom in advance. It will then be regulated by the appropriate body under the relevant code.

³⁰ <http://www.ofcom.org.uk/tv/ifi/codes/advertising/>

Overview of Ofcom's responsibilities

- 5.28 As mentioned above, Ofcom has a statutory obligation to draw up a code for television and radio, covering standards in programmes, sponsorship, and fairness and privacy. The standards set by Ofcom must be those which Ofcom considers best calculated to secure certain standards objectives set out in the Act³¹. Ofcom therefore published a new Broadcasting Code in May 2005; this came into force in July 2005.
- 5.29 Section 319 (4) of the Act provides that, in setting standards for broadcast content, Ofcom must have regard to, amongst other things, the desirability of maintaining the independence of editorial control over programme content. Section 10 of the Broadcasting Code (Commercial references in programmes) reflects both this and the separation requirements of the TWF Directive.
- 5.30 Accordingly, Section 10 of the Broadcasting Code includes rules to ensure that products and services are not promoted within programmes, except in limited and defined circumstances, and to prevent unduly prominent references to products and services in programmes. In essence, this is to maintain independence of editorial control and prevent programmes becoming advertisements for products and services. Under Rule 10.9 of the Broadcasting Code, a premium rate telephone service ('PRS') will normally be regarded as a product or service and consequently may only be used in programmes in certain limited circumstances, that is, where:
- the PRS is a 'programme-related service' as defined in the Broadcasting Code, i.e. it is "both directly derived from a specific programme and intended to allow listeners or viewers to benefit fully from, or to interact with, that programme", e.g. SMS updates from *Channel 4 News*; or
 - the PRS "forms part of the editorial content of the programme", e.g. viewer voting in *I'm a Celebrity Get Me Out Of Here*.

BCAP Television Advertising Standards Code and BCAP Rules on the Scheduling of Television Advertisements

- 5.31 The BCAP Television Advertising Standards Code and the BCAP Rules on the Scheduling of Television Advertisements set out the rules that govern advertisements on television channels licensed by Ofcom. The rules are based on enduring principles; that advertising should not mislead, cause deep or widespread offence or lead to harm, particularly to the vulnerable. Of particular relevance to this consultation are the rules which place explicit scheduling restrictions on the advertising of adult chat services (Rule 11.1.2) and particular content limitations on the advertising of psychic reading services (Rule 10.3) and dating services (Rule 11.7).

Amount and distribution of advertising

- 5.32 Section 322 of the Act gives Ofcom the power to give directions to its licensees on the amount, scheduling and presentation of advertising. The relevant rules are contained in RADA. The ASA administers rules regarding the content of television advertising under the BCAP Advertising Code.

³¹ See Section 319(2)

- 5.33 RADA recognises a number of sub-categories of advertising. In particular, they provide for all advertising channels consisting of either teleshopping or self-promotional content. General editorial channels may also carry teleshopping, both in the form of short 'spot' advertisements and longer 'windows', of a minimum 15 minutes duration. The maximum time per day allowed for such windows is three hours. Self-promotional channels carry a particular kind of advertising in which the broadcaster promotes its own products, services or channels. Both teleshopping and self-promotional channels are prohibited from carrying editorial/programming material.
- 5.34 The public service broadcasters ('PSBs') that carry advertising (that is, Channel 3 licensees, Channel 4 and Five) are not permitted the three hour teleshopping windows i.e. there is no additional airtime for teleshopping on these channels. They may run long-form advertisements, including teleshopping, between midnight and 6am. However, during this period they are still limited to a maximum of 12 minutes of advertising in any one clock hour. The minutage also counts towards their hourly average daily spot advertising allowance (seven minutes across the day, eight minutes in peak). As explained in paragraph 4.21 above, Ofcom is considering possible changes to the rules on how much teleshopping may be shown on PSB channels and other channels³².

Sanctions

- 5.35 In respect of advertising, the ASA has the power to require broadcasters to remove or suspend advertisements. In addition, as noted above, Ofcom has a range of sanctions it may impose on broadcasters found in serious breach of the codes, whether in respect of editorial or advertisements. These include a direction to broadcast a statement of Ofcom's findings, a financial penalty and, in the most serious of cases, the revocation of a licence (not in the case of the BBC, Channel 4 and S4C).

PhonpayPlus

- 5.36 PhonpayPlus³³ regulates premium rate services as defined in the Act. Its role is to prevent consumer harm and it regulates premium rate services in their entirety - their content, promotion and overall operation - through a Code of Practice. Among other things, PhonpayPlus requires:
- clear and accurate pricing information;
 - honest advertising and service content; and
 - appropriate and targeted promotions.
- 5.37 PhonpayPlus investigates complaints, and has the power to fine companies and bar access to services if the Code of Practice is breached. Other possible sanctions include ordering the service provider to pay reasonable and valid claims for compensation, and barring the individual(s) behind a company from running any other premium rate services under any company name on any telephone network for a defined period.

³² <http://www.ofcom.org.uk/consult/condocs/rada/>

³³ Previously known as ICSTIS (the Independent Committee for the Supervision of Standards of the Telephone Information Services)

- 5.38 As discussed in Ofcom's statement on PTV Part 1³⁴, published in February 2008, PhonepayPlus has introduced a prior permission scheme for PRS service providers who provide services to broadcasters. Some services, such as live chat services, have for a long time required prior permission because of the nature of the service provided, rather than its provision in broadcasting. Those arrangements will continue.

³⁴ <http://www.ofcom.org.uk/consult/condocs/participationtv/statement/>

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the questions raised in this document, to be made **by 5pm on 22 May 2008**. Details of how to respond are provided at Annex 1.
- A1.2 Ofcom is allowing a period of six weeks for responses to this consultation. We have already held a ten week consultation on the question of how to regulate the promotion of PRS in programmes in order to ensure a proper degree of advertising separation. We also published a pre-consultation Issues Paper in December 2006, which identified the regulatory challenges posed by content predicated on the promotion of PRS and sought comments from stakeholders. Having considered the issues thoroughly, Ofcom has decided that amendments to the Broadcasting Code are required. This current consultation is concerned with the wording of those amendments. In all these circumstances, we therefore consider that six weeks is a reasonable and appropriate period for responses to this consultation.
- A1.3 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/participation2/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.4 For larger consultation responses - particularly those with supporting charts, tables or other data - please email participationtv@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.5 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Yvonne Matthews
5th Floor, Content and Standards
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3806
- A1.6 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.7 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.8 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Ritu Manhas on 020 7981 3853.

Confidentiality

- A1.9 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.
- A1.10 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.11 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.12 Following the end of the consultation period, Ofcom intends to publish a statement in summer 2008.
- A1.13 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.14 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.15 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.16 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

Q1. 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.

Q2. Do you have any comments on the draft explanatory guidance set out in Section 4? Please provide drafting suggestions where appropriate.

Q3. Do you agree that the proposed rules should apply to radio as well as to television?