

Ofcom Consultation On Participation TV: Protecting Viewers and Consumers, and Keeping Advertising Separate From Editorial

Response From Channel 4

Since February this year, a number of concerns about premium rate ("PRS") services across the broadcast industry have come to light which have, understandably, seriously damaged public confidence in broadcast PRS services. This is a matter of serious concern to the Channel, therefore it has taken extensive steps to conduct detailed reviews of its services and has been liaising closely with Ofcom and PhoneyPayPlus (formerly ICSTIS) to address the issues affecting the industry. Channel 4 welcomes this consultation as a very important part of this process, and it is hoped that it will result in clear guidance to broadcasters, service providers, network operators and the public on what is expected from such services and ensure that best practice is consistently adopted across the industry.

As Ofcom will be aware, Channel 4 is in dialogue with Ofcom, other broadcasters and PACT about ways to rebuild viewer trust and improve standards for the future. We are actively pursuing a number of initiatives in relation to training and working relationships with independent producers. Channel 4 recognises and takes very seriously its responsibility as broadcaster for all programmes shown on our channels. We believe Ofcom has an important role to play in encouraging production companies (and PACT) and service providers to also take their responsibilities seriously. Our response to the consultation set down below is framed in this context.

Protection of viewers and consumers in all PTV

Q1. Do you agree that television broadcasters should be directly responsible for PRS in programmes and also for other forms of communication where viewers seek to interact with programmes? Please explain why.

Agreed. The primary relationship is that between the broadcaster and the viewer because the viewer associates the content broadcast on a particular channel with the broadcaster. The viewer therefore places their trust in the broadcaster, not in the other providers in the supply chain. Very often, viewers do not know or do not register who is the production company or the service provider. This is apparent from the fact that the most serious damage caused by recent PRS issues across the industry has been to broadcasters' relationship of trust with viewers.

However, the fact that there are two regulators in this area, Ofcom and PhoneyPayPlus, which have overlapping but not identical remits does create uncertainty. The services provided by service providers form part of a separately regulated industry monitored by PhoneyPayPlus, yet there is scope for double jeopardy with broadcasters being held responsible by Ofcom for those same activities of service providers which PhoneyPayPlus already regulates. In our view, greater clarity and understanding would be achieved by having a single unified regulator regulating PRS services, with jurisdiction over both broadcasters and service providers. This would not only avoid the risk of double jeopardy but also clarify for the industry and the public the responsibilities of the regulated organisations.

We fully agree that broadcasters should take responsibility for the structure of PRS services, the fair treatment of viewers and transparency in providing information to viewers about PRS services. We also agree that broadcasters should have sufficient knowledge of PRS technology to make an informed assessment of the expertise of the service providers and network operators which they propose to contract with, and to audit the provision of services by those providers. However, a particular area of concern is the fact that there are extremely technical aspects to the provision of PRS services which broadcasters do not have (and cannot be expected to have) the expertise to deal with or influence (eg. the

transmission of SMS messages, or the reliability of technology and platforms used by network operators and service providers). In Channel 4's view, Ofcom should give serious consideration to where responsibility for these technological aspects of PRS services should lie, particularly if a dual regulatory system is maintained.

In practice, broadcasters have neither the infrastructure nor the technological expertise to undertake the roles of network operator, service provider and producer as well broadcaster when providing a PRS service to viewers. This inevitably means that broadcasters will engage specialist third party network operators, service providers and production companies to provide specific aspects of the PRS services. Broadcasters are therefore concerned to ensure that such third parties take compliance with the regulatory codes as seriously as the broadcasters do. This can to some extent be achieved through contractual arrangements and broadcasters actively engaging with and regularly monitoring the third parties. However, Channel 4 would welcome Ofcom's suggestions for measures which could be put in place to support broadcasters in impressing the importance of compliance on other parties in the supply chain.

Q2. If so, do you agree that a variation to television licences would be the most appropriate way of ensuring that broadcasters are responsible for such PRS compliance?

Channel 4 has no objection to a licence variation.

Q3. Do you agree that there is a need for broadcasters to obtain independent, third party verification that they are in fact complying with the draft licence obligations set out in Paragraph 2 of the draft licence variation? If so, which of the options for verification discussed in Section 4 do you think is most appropriate? Are there other appropriate options? Again, please provide reasons.

Agreed. In Channel 4's view, Option C (Detailed Audit Specification) is the most appropriate verification procedure. It would provide certainty as to the standards which providers of PRS services are expected to meet. Furthermore, the requirement to report regularly the results of the verification process to Ofcom would further ensure that not just broadcasters but all those involved in the supply of PRS services put processes in place to make sure that services are not only compliant but are reviewed on a regular basis.

We also agree that it is important to have expert input into the drawing up of the audit specification with input from all sectors of the supply chain, including broadcasters, production companies, service providers and network operators.

We recognise and accept that this will inevitably lead to an additional cost burden. However, although cost is a relevant factor, in our view the primary considerations must be the integrity of the process and viewer trust, and these must take precedence.

Q4. Do you have any comments on the draft licence variation set out in Annex 5? Please support your comments with adequate explanation and provide drafting proposals as appropriate.

The obligations set out at paragraphs 2(a)(i) and 2(a)(ii) of the draft licence variation include responsibility for detriment arising from shortcomings in communications networks and processes, and other technical processes, and the transmission of votes and entries. We would ask for clarification of the extent of this responsibility.

As stated in response to Question 1 above, broadcasters do not have the technical infrastructure or expertise to be able to influence or operate these aspects of PRS services.

In the light of this, we would question the extent to which it is appropriate to hold broadcasters responsible for these aspects.

It is right that broadcasters should be obliged to make prudent inquiries regarding the expertise and reliability of service providers and network operators and the services which they provide, and that broadcasters should have sufficient expertise to make an informed assessment of these issues. However if, having made a proper assessment of the network operators, service providers and their services, a technical problem occurs, the broadcaster's responsibility should be to:

- ensure that necessary information is communicated transparently to viewers to so that they are not misled; and
- minimise any resulting unfairness to viewers.

Responsibility for the technical failure itself should lie with the network operator or service provider providing those technical processes.

Q5. Do you agree that the draft licence obligations should not be limited to television but should also apply to radio broadcasters? Please provide reasons.

The relationship between radio broadcasters and their listeners is analogous to that between television broadcasters and their viewers and should be afforded the same protection. In the light of this, we agree that the draft licence obligations should also apply to radio. However, although Ofcom has investigated a few radio competitions, the scale of the issues identified has been small compared with television. In the light of this, it would be excessive to impose a costly, mandatory external audit process for radio. We suggest that there should be no external audit as a matter of course, but that this could be imposed by Ofcom by way of a sanction should Ofcom uphold a serious breach of the new licence condition by a specific radio licensee. Even in that case, however, the requirement for an external audit ought to be retracted after a specified number of good reports.

Separation of editorial and advertising in dedicated PTV

Q6. Which of the options proposed in Section 6 do you believe is most appropriate to ensure separation of advertising from editorial content? Please explain why.

Q7. Do you have any comments on the draft new rules and guidance in respect of Options 2, 3 and 4 set out in Annex 6? Please support your comments with adequate explanation and provide drafting proposals as appropriate.

Q8. 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.

Although Channel 4 does not presently operate any dedicated PTV services, it considers that regulation of such services is very important to ensure that such services are responsibly operated.

We agree that dedicated PTV services are essentially commercial in nature and therefore should be regulated as advertising so that the separation of editorial and commercial content is made plain to viewers. Channel 4 considers that this could be best achieved by implementing Option 4 (Class dedicated PTV Services as advertising, i.e. teleshopping or self-promotion). This is on the basis of our understanding of Option 4 is that this would class dedicated PTV services as advertising and therefore subject to the relevant advertising

*Ofcom Consultation on Participation TV:
Protecting viewers and consumers, and keeping advertising separate from editorial
Response from Channel 4*

regulations, but that other PRS services (eg. viewer competitions or votes in programmes) would continue to be subject to the existing arrangements.

Q9. 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.

For the reasons set out in our response to questions 6, 7 and 8 above, Channel 4 agrees that the separation of advertising and editorial content is very important and that the correct approach is to regulate dedicated PTV services as advertising.

17 October 2007