

## **Response from Million 2-1 Ltd**

**Question 1: 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.:**

We agree that broadcasters should be responsible for 'compliance' of PRS activity within their own programming as ultimately the broadcaster 'owns' this process. The recent scandals were caused by production and communication issues between broadcaster and services provider with no-one accepting overall responsibility for compliance. However, this does not mean that all the broadcasters should become service providers themselves as many smaller groups simply could not justify the costs of the technology or legal infrastructure to support PRS.

There is also a potential conflict here with the current ICSTIS regulations which hold the service provider not the broadcaster responsible for compliance of PRS which would need to be addressed as part of this consultation.

**Question 2: 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?:**

At the moment there is a potential conflict between the Ofcom and Icstis regulation and Icstis regulations currently hold the service providers and traffic carriers responsible for compliance rather than the broadcasters. This process has clearly failed in the past and a solution could also be to involve ICSTIS in the regulation of broadcasters for PRS. ICSTIS have a highly effective 'prior permission' scheme for gaming services which could be adopted for all future use of PRS in TV and radio and this could be an alternative to the approach outlined in the consultation. However, we do agree that a variation in licenses which specifically covers PRS and outlines responsibilities for compliance by broadcasters would be a positive step forward when implemented alongside other controls and regulations from other bodies such as ICSTIS and the Gambling Commission.

**Question 3: 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.:**

We are concerned that the Ofcom consultation and recommendations does not take into the account the 'legality' of PRS services in the future particularly since the implementation of GA 2005 which renders many services as potentially illegal without permits. As outlined above, there is also a potential conflict / repetition with

the ICSTIS regulations and procedures. We believe that an approach based on a prior permission or licensing regime (preventative controls) would provide much stronger controls in the future rather than auditing and checks post events (detective controls) on their own and any solution must involve the other regulators including the Gambling Commission and ICSTIS. Certainly the GC process and procedures already replicate many of those recommended within the Ofcom consultation especially for products which are deemed to be lotteries.

In conclusion, we would probably agree with Option C requiring a detailing audit specification but would urge that this specification is developed and the process managed with the other regulators. It is vital to note that PRS products live outside of the broadcast media and are subject to UK gaming laws and both ICSTIS and the Gambling Commission will have to be involved in this process.

**Question 4: 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.:**

We agree broadly with the drafting proposed and in particular that the licensee must demonstrate 'reasonable skill and care for selection of the means in the handling of communications received' however we would question how this is able to be quantified or qualified without a more specific list of formal requirements. As an example, there is a situation where some members of the public are disadvantaged (those without access to the internet for free entry) compared to others and we would urge that broadcasters must also take responsibility for legality of any such services as part of the licensing process. The Gambling Act requires gaming operators to demonstrate that their processes, procedures and systems fulfil the following protections which should be mirrored within the broadcasters license requirements:

- a) Protect minors and the vulnerable
- b) Prevent criminal activity and frauds
- c) Prevent money laundering; and;
- d) Provide fairness.

We re-iterate that any new Ofcom proposed licensing requirements cannot be implemented in isolation of the regulations enforced by ICSTIS, Ofcom and the ASA. As an example, the Gambling Commission have already raised concerns that much of PRS activity on TV and Quiz TV maybe illegal lotteries and we would argue that much of this activity is considered to be gaming within UK law. The Ofcom consultation document categorises Quiz TV as editorial and both GA 2005 and the recent ECJ statements may disagree with this conclusion.

**Question 5: Do you agree that the draft licence obligations should not be limited to television but should also apply to radio broadcasters? Please provide reasons.:**

We agree that the Ofcom license obligations when agreed should also apply to radio although it will be important to ensure that the differences between radio and TV

promotions / editorial are considered. As an example, radio does not allow on screen information and controls and radio is a very different medium and has very different licensing conditions to TV which will need to be reflected.

**Question 6: 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.:**

We broadly agree with Option 2 'Classed as editorial, subject to new rules'. Our main reason for this is that as a provider of PRS and voting competitions particularly for radio such services do provide an important component of the content and editorial of the broadcast material. Prize draws and competitions in particular are an important differentiator for many broadcasters and provide a means for interaction between broadcasters and their consumers.

However, there is currently a major debate with the GC and other regulators around the legal classification of certain dedicated Call TV formats such as Quiz TV where this content could well be considered to be 'gaming' and clearly if this is the case such content could not be argued to be editorial without further changes to the Ofcom regulations and licensing requirements. As an example, we are discussing separately with Ofcom the implications of enabling PRS lotteries (regulated by GC) and operated on a not for profit basis as a solution to the prevalent issues in this area. It would certainly not be consistent to allow 'illegal lottery' schemes to be aired as editorial content whilst legal and regulated schemes would not be allowed.

**Question 7: 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.:**

We would question the detail of this proposal around the following two points:

a) Dedicated participation programmes must not use a caller's number to generate further contact by voice service, SMS, MMS or other means.

This clause is inappropriate given the CRM aspects and requirements for PRS type services where communication with the caller is an important part of the transparency, editorial and operation of such mechanics. We would agree that such communication should not be used for promoting other 'products' which are unrelated to the caller's response or editorial but communication with callers in this way is an important aspect of the editorial.

b) Credit card and other payment.

In the future payment by credit card and other payment methods may become more attractive to both the customer and broadcaster as technology and products in this area develop. As an example, many PRS solutions do not provide adequate protection for the consumers and services such as voting and competitions are more expensive when offered with payment via PRS when compared to credit card where there is no

operator take involved. We believe that developments in both payment technologies and the convergence of TV and the web will develop an interacting model with broadcast material where credit card and other payment methods will be appropriate, practical and more beneficial to the consumer and therefore these options should not be excluded in the future.

**Question 8: 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.:**

We agree that Option 2 could be applied to all PRS activity on TV and radio subject to our concerns around the payment methods and communication with viewers / listeners as outlined above.

**Question 9: 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.:**

We are in broad agreement that Ofcom have correctly identified the various impacts arising from each option apart from the role which other regulators such as ICSTIS and the Gambling Commission will hold in this area moving forward. We are concerned that the number of regulators in this area could create confusion, repetition and conflicting instructions to broadcasters and this is an area which will need to be addressed as part of any solution. Whilst we agree that PRS mechanics such as voting, text to studio and competitions are important aspects of editorial it is also clear that some current PRS services are either forms of gaming or illegal lotteries and this is an area which urgently needs to be addressed.

It is also important to recognise, that broadcasters will inevitably continue to work with service providers and telco's in partnership and any changed Ofcom regulations / licensing conditions must entail making a single party (i.e. the broadcaster) ultimately responsible for compliance in this area. This is a difficult scenario given the broadcasters dependence on external suppliers, systems and third parties in this value chain and broadcasters will need to perform more due diligence of suppliers and their systems in the future which may incur additional costs and process.

**Comments:**