

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:

In common with the key recommendation of the Ayers Report, broadcasters should be directly responsible for PRS in programmes. As the party that contracts with PTV participants and has the key role in and channel to promoting the transparency and fairness of PTV service operation, it follows that the broadcaster must be directly accountable for PRS within their programmes.

PhonpayPlus have previously suggested that the party providing fixed or mobile connectivity services to the broadcaster (whether directly or indirectly) should hold a license and therefore be responsible for PRS within programmes. As an additional or alternative measure, this is absolutely the wrong approach. The consumer correctly perceives the broadcaster to be the provider of the service they are interacting with, therefore primary responsibility must lie with this party.

Whilst those parties providing connectivity services have a role to play in ensuring the technical integrity of the services they provide to broadcasters, they have very limited visibility and invariably no control over the operational integrity of the PTV services being provided to consumers in their totality.

Operational integrity or lack thereof is at the heart of the loss of confidence in PTV services. It would therefore be sensible if the actual party providing the PTV service, that party with first-hand knowledge and control of the service provided to consumers, was directly accountable, in order to ensure that PTV services are operated in a transparent, robust and fair manner.

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?:

A variation to the television license would be appropriate. However, given the remit of PhonpayPlus covers all PRS services, there needs to care taken to ensure that the demarcation of responsibility between Ofcom and PhonpayPlus is absolutely clear, to ensure that investigations are correctly focussed and to ensure clarity for consumers.

This could be achieved by means of Ofcom taking primary responsibility for investigating adherence to the terms of a television license. If such investigation demonstrates that non-compliance has been caused due to reasons beyond the control of the broadcaster (i.e. a connectivity-related issue that the broadcaster reasonably has no awareness of), PhonpayPlus should take over responsibility and frame an investigation under the terms of their Code of Practice, with the assistance of the relevant aggregator or Information Provider.

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 agree that this is necessary. Given our position in the value chain, other parties are better placed to determine which variation is the most appropriate.

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.:

As above.

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.:

The regulation of consumer participation in broadcast services should be channel-neutral and should therefore apply to radio as well as television.

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.:

The Ofcom-commissioned quantitative and qualitative research into dedicated PTV demonstrated that viewers "enjoy watching the content in its own right, i.e. even where they choose not to participate".

Although Ofcom state small sample sizes render these results slightly anecdotal, this finding hints at what is a common assumption in respect of dedicated PTV channels - that the composition of viewers includes a significant proportion of viewers with no interest in participating. This is significant in demonstrating basic adherence to the separation principle - the programmes constitute editorial and not advertising.

In the interests of absolute clarity however and to allow this market to move forward on a surer definitional and therefore stronger commercial footing, it may be useful to provide viewers with information to ensure they are aware of the commercial model underpinning the programme. Consequently, we believe an element of Option 3 provides the best solution, although the content of the on-screen statement should be given further consideration to ensure it informs viewers effectively. More vitally, this must be subject to the restriction on further interactivity with the viewer being removed.

Whilst consumer protection must be paramount, where there are no risks, regulation must not stifle innovation. Section 5.29 of the Consultation states:

"..it appears that regular viewers - at least of psychic TV and adult chat TV - enjoy watching the content in its own right, i.e. even where they choose not to participate".

This demonstrates that there is no ambiguity in such programmes between editorial and advertising. As a result, measures of only allowing on-screen participation and only allowing interaction in the form of an inbound communication from the consumer are not necessary. Whilst being unnecessary, they would also have a devastating impact on the continued viability of services commercially and would reduce innovation currently evidenced by interaction in the form of social networking - whereby programmes enable consumers to communicate with each other with the programme as the medium by which this is achieved. Further detail is provided in the response to Question 9.

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.:

Options 2 and 4 are inappropriate as detailed in response to Question 6.

Draft rule 10.19 may be appropriate subject to the wording being relevant to the viewer. Reference to the need to "read the charging information carefully" would seem to obfuscate rather than clarify, where pricing information is clearly presented.

Draft rule 10.20 is entirely inappropriate.

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.:

Option 2 constitutes a significant amendment to, rather than a clarification of, the existing provisions and as above, will cause significant broadcaster difficulties without having any benefit to the consumer.

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.:

There is serious concern that the impact has not been appropriately considered and we would urge a further round of more in-depth consultation on this Section.

Option 1: The key disadvantage of the requirement for greater regulatory certainty has been identified.

Options 2 & 3: The commercial impact of prohibiting off-screen interaction (despite the presence of editorial and consumer clarity as to the service being provided) has been overlooked. The impact of prohibiting further contact has also not been considered.

It would be counter-productive to prevent responsible mobile marketing companies from being able to market relevant services to viewers that have interacted with a TV show for several reasons:

The moment at which a viewer decides to interact is the moment at which they are most likely to be receptive to and indeed interested in relevant advertising. Preventing this opportunity to would-be advertisers and mobile marketers would not only stifle innovation in what has already transpired to be a very difficult market to operate within, but also diminish the overall user experience at the very moment when they have expressed interest in something.

It is up to the viewer to decide whether to interact with a show based on what is presented before them (assuming adherence to existing Ofcom and PhonepayPlus requirements) and equally, it is up to the viewer to decide whether they wish to respond to any subsequent advertising that they would have agreed to by their initial interaction.

This area also needs to be considered in light of recent growth areas of social networking and dating. The recent phenomenon of online sites such as MySpace, Facebook and Bebo are as much about social interaction as they are about music, for example. TV shows operating in music genres in particular, have found that social interaction and the mobile messaging that this gives rise to by far outweighs the interaction concerning music per se. Providers of inbound picture messaging services to music channels have testified to the fact that the vast majority of messages received relate to social networking and dating.

Therefore interactivity and its key facet - i.e. that it is two-way, is a vital component and driver behind the current success of such interactive formats.

Additionally, responsible companies already take measures to prevent users from receiving marketing messages more than once if they didn't respond the first time, and to further re-enforce consumer confidence, clear opt-out information is already included in all such mobile marketing material as per existing regulations. It is accepted that there are companies that go beyond what would be considered appropriate marketing and this needs to be addressed by PhonepayPlus. However, we would argue strongly that the majority of companies operate responsible services that in no way lessen a viewer's overall TV experience. On the contrary, the success of such marketing at the point when a user has expressed an interest in a format would go a long way in supporting the notion that such marketing improves a lot of viewers' overall experience. To stop responsible companies from providing such services would be to go against the spirit of innovation and progress and send a very negative message to the providers of interactive formats that, in the main, have been warmly appreciated by viewers across the UK.

Option 4: The editorial value consumers derive from dedicated PTV services is understated.

Comments:

Further consultation is vital in respect of dedicated PTV to ensure that consumer protection is applied where relevant whilst ensuring the dedicated PTV market is not

inappropriately targeted and commercially decimated. As a result, we would urge Ofcom to engage in further consultation to ensure that this does not transpire.