



**FINAL October 2007**

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19 October 2007

**Ofcom Consultation**  
**on**  
**Participation TV**

**Protecting viewers and consumers, and  
keeping advertising separate from editorial**

**NOC Submission**

The Network for Online Commerce (NOC) is a not for profit trade association that exists to promote and facilitate successful enterprise in interactive Telemedia markets around the world. The NOC is uniquely qualified to reflect the views of the UK Premium Interactive Media market as its membership spans the entire value chain and is involved in the vast majority of premium value transactions. We welcome this opportunity to comment constructively on this consultation regarding the Participation TV market in the UK.

It is the NOC philosophy that consumers who are accurately and openly informed of the cost and content of participation in an interactive experience are perfectly placed to exercise their freedom of informed choice and therefore enjoy the most effective form of consumer protection.

***General***

The recent regrettable problems and associated adverse publicity suffered by the interactive broadcast service sector, while certainly serious, cannot mask the fact that the sector represents a highly popular entertainment medium that has, and will continue to bring value for money enjoyment to the vast majority of those who participate.

The industry has encountered problems which it has now realised have largely been caused by rapid growth and the less than satisfactory industry response to properly manage this growth. This is not a circumstance limited to interactive broadcast services, it is a classic management



dilemma experienced by any business exposed to demand for its services which far outstrip its most optimistic expectations.

It is important to understand and emphasise that what has happened to interactive broadcast services has been due to management and infrastructure failures and not the result of any malicious intent to mislead or defraud the public.

There are certainly areas that need urgent improvement and it is noteworthy that all elements of this value chain have moved swiftly and without the necessity for formal regulatory intervention to address identified problems.

These areas cannot all be addressed overnight and there will clearly need to be some associated regulatory and business management changes to ensure we achieve an effective regulatory and business framework which will provide clarity and confidence to both the value chain and, most importantly, consumers. The interactive media industry is committed to achieving such changes without delay.

We welcome the view that any conclusions or actions regarding a Prior Permission regime proposed by ICSTIS for PRS use in TV and radio programmes would be premature until such time as this Ofcom Consultation is concluded.

### ***Consultation Questions***

#### ***Protection of Viewers and Consumers in all PTV***

The protection of consumers from unacceptable practices and unacceptable exploitation is totally supported by the interactive media industry and we believe the preferred approach is to ensure that consumers are fully informed at the point of sale and enjoy freedom of choice.

The closer the responsibility for informing and interacting with the consumer is to the consumer the more effective this process becomes.

#### ***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.***

Answer 1

Yes, we agree. The NOC has campaigned for some time now to place the responsibility, or perhaps accountability would be a more accurate term, for premium value consumer services closer to the point of sale. With this principal in mind it is eminently sensible that Broadcasters, who represent the closest point of service contact with the consumer should be held directly accountable for regulatory compliance regarding interactive programmes and the relationships with suppliers involved in the services chain to consumers. This responsibility will include ultimate compliance with all related Codes of Practice and the quality of interactive communications. Such an arrangement would of course in no way absolve the Service Provider (as currently defined in the approved PRS Code) of the requirement to continue to operate in a compliant manner in support of the Broadcaster/Producer to whom they have contracted.

It is noteworthy that the current distribution of revenue from a PRS call, with the Broadcaster receiving approximately 75% of the proceeds of a call, also supports this allocation of responsibility.

This arrangement will expose Broadcasters to a potential problem of split regulatory responsibility between programming issues and PRS issues which currently reside with Ofcom and ICSTIS (as an agency of Ofcom) respectively. This would likely benefit from further consideration and discussion and might also feature in the forthcoming Scope Review for PRS.

#### **Question 2**

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

Answer 2

Yes, we agree.

#### **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 license obligations set out in paragraph 2 of the draft license 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.***

Answer 3

Yes, we generally agree. We believe it will normally be sufficient to require an annual audit be conducted and for the broadcaster to declare that its verification arrangements are fit for purpose as outlined in Option A. Ofcom need only request sight of the audit report on an occasional basis to ensure compliance with the licensing obligations. This represents the most light handed approach which promotes and encourages a self regulatory environment.

However, some Members have expressed the view that more frequent random real time or retrospective audits would be more appropriate in some instances and perhaps an element of flexibility should be preserved to enable Ofcom to consider individual cases on their merit.

#### **Question 4**

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

Answer 4

The draft license variation appears reasonable and workable and, as stated previously, our majority preference is for Option A.

**Question 5**

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

**Answer 5**

We see no differences between broadcast television and broadcast radio that would justify a different approach for radio and we agree that the same licensing obligations should apply.

**Separation of editorial and advertising in dedicated PTV**

PTV services, however they may be delivered, and their radio counterpart occupy an area of creative innovation and both require the ability to rapidly respond to market changes. We would not wish to see disproportionate and undue restrictions placed upon this industry that would inhibit its development and growth so would prefer a pragmatic and flexible approach to the separation of editorial from advertising.

It is important that regulation be consistent and be focussed on services rather than technology and for this reason we would not wish to see any differentiation between dedicated PTV channels and PTV services delivered alongside other programming. The delivery mechanism is technology and regulation should be focussed on the end product service, in this instance interactive PTV. We appreciate that current licensing appears to be designed along technological lines but we believe this to be an area that would benefit from examination as convergence becomes ever more evident in interactive communications based services markets.

This market sector, and its associated employment responsibilities, is an important area for future growth of the interactive media and entertainment industry and it is one that has been seriously impacted by damaged consumer confidence during 2007 for reasons that are well documented. We ask that Ofcom be sensitive to the need to rebuild this most popular service area and restore consumer confidence. That mistakes have been made is well recognised and the price of those mistakes now needs to be converted into valuable experience.

**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.***

**Answer 6**

It is generally accepted and supported by Ofcom's own research that significant numbers of viewers of interactive programmes enjoy watching the content of the programme even when they have no intention of participating. This would indicate in our view that viewers are responding to editorial content rather than advertising. 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".

It appears that Option 3 offers the more pragmatic and workable solution. If it would help remove any doubt that consumers clearly understand the nature of the services offered we would certainly support reasonable and sensible on screen labelling, and particularly if this perceived clarity supported the future development of innovative service variants and alternative methods of payment.

We question the need to apply additional constraints to “dedicated” participation programmes over mainstream programmes if consumers have been made fully aware of the content and nature of the programming and in a similar manner we question the need for restrictions on the possible further interaction with callers.

We repeat our previous comments regarding differential regulation according to the technology employed in delivering services and reiterate that we would prefer to see a consistent approach to the regulation of interactive TV services.

**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.***

Answer 7

We have no comment on Options 2 and 4 since our preference is for Option 3. We suggest further discussion on the precise content and presentation of the on screen message proposed in 10.19 and we would not wish to propose any alternative in advance of this. Proposed rule 10.20 appears to be unduly restrictive for the reasons outlined in answer 6.

**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.***

Answer 8

As previously indicated we believe it is appropriate for these provisions to apply to both PTV, however delivered, and radio.

**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.***

Answer 9

We have concerns with the UK PRS revenue figures contained within section A7.22 of Annex 7 which records the overall PRS market to be valued at £1.6bn. The generally accepted value of UK PRS for the year 2006 is £1.2bn and with the PRS market currently in a recession we expect the outturn for 2007 to be of the order £0.8 – 0.9bn. Some analysts predict lower figures.

The impact of the introduction of the 11<sup>th</sup> Edition of the approved ICSTIS Code is now being felt and understood. New market entrants into the PRS sector is at its lowest ever recorded with less than 40 entrants thus far for 2007 against a figure of over 250 for the whole of 2006.

Other assumptions regarding Impact Assessment are difficult to assess with any accuracy at this time and we would recommend early round table discussion between concerned respondents. Of particular concern to our members are the restrictions deemed necessary regarding ongoing marketing to responding viewers who have interacted with a given programme in a fully informed manner.



This is a very sensitive period for UK PRS and a light handed pragmatic approach to whatever option is introduced to the interactive PTV arena would be appreciated. It is accepted that the consultation does recognise the importance of this market and the significant benefits available from an early restoration of consumer confidence (A7.10).

### ***Statement of Representation***

The NOC confirms that this response has been compiled following a process of distribution of the relevant Consultation documentation to all NOC members. A list of NOC members may be found at [www.noonline.org/currentmembers.aspx](http://www.noonline.org/currentmembers.aspx) .

The views expressed in this response are a fair representation of the views held by the responding NOC membership. Individual members are actively encouraged to submit their own independent views as they deem fit and at their sole discretion.

We look forward to your response and assure you that, as ever, our comments are made constructively and with the aim of achieving an effective, fair and proportional regulatory regime for Premium Interactive Media services in the UK using the PRS billing model.

If any clarification to our response is required or if we can be of any further assistance please contact Zoe Patterson 01273 863223 or [zoe@noonline.org](mailto:zoe@noonline.org) .

Sincerely

NOC