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.:

Response: We agree. The broadcaster is the person ultimately responsible for the visible interface with the viewer (ie: that which the viewer sees or hears) and therefore it is correct that the broadcaster should assume ultimate responsibility for the promotion of the PRS numbers which appear as part of the broadcast and which can be a qualitative component in the viewers experience

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?:

Response: We agree. This approach would appear to be relatively straight forward, hopefully inexpensive and create a ?level playing field? approach to all licensees.

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.:

Response: We agree that as a matter of best practice broadcasters should have in place, whether external or internal to their organization, a procedure whereby there is an on-going process of verification that the draft license conditions are being complied with. Whilst of the 3 options mentioned, we would be inclined to favour Option A we are concerned regarding the detail as to what is intended and meant by the expression ?independent verification? for the following reasons:

a. We are concerned that the cost of independent verification may be substantial, particularly for the smaller broadcaster, and that a tier of bureaucracy is created which ultimately adds little value to those broadcasters who exercise best practice in internally monitoring and enforcing the license obligations set out in paragraph 2. We feel that Ofcom should have the ability to call for evidence that compliance is in fact happening and should there be a difference of view in any material respect as between the broadcaster and Ofcom, then there should be the facility whereby Ofcom may appoint an independent third party to adjudicate on the matter in dispute. The cost of the reference to an independent third party should be in the adjudicators award which would ensure that broadcasters were diligent in their observation of their obligations and yet ensure that both Ofcom and broadcasters exercised any such reference to a third party in a non-arbitrary way. We feel that this matter of costs, so inadequately addressed in the ICSTIS Code, is of critical importance to the integrity and fairness of any process. The prospect of the regulator being required to pay the costs of the broadcaster will lend emphasis to the ?independence? of the third party;

b. We are concerned as to the qualifications which an independent third party should have given the very ?niche? nature of broadcaster and its myriad sub-divisions. In our view, it may well be very difficult to identify a sufficient number of such persons. We would remind Ofcom of the problems experienced in the residential property sector with the lack of appropriately qualified energy assessors for home information packs and confusion regarding the form that such packs should take. At the very least, there should be a sensible lead time in which persons could be trained. We are, from our own experience, convinced that most lawyers and accountants do not, certainly without significant industry experience and training, possess the requisite skills to be justifiably regarded as an appropriately qualified independent third party;

c. Reinforcing our observations at a. above, we are concerned that if there are an insufficient number of suitably qualified independent third parties, then those few persons who did possess the requisite expertise, could be most expensive indeed, this being the simple logic of supply and demand;

d. We are concerned that in respect of broadcast PRS that there are not inconsistencies between the approach taken by Ofcom and that taken by ICSTIS. There should be consistency and not a doubling up of costs, a ratcheting up of bureaucracy or lack of transparency. Very clear guidelines should be set down. However, given the complexity of broadcast media, we feel it should be left to the individual broadcaster, ultimately accountable to the appropriate regulator, to ensure compliance with the licence conditions rather than have a more inflexible, prescriptive, ?one size fits all? approach.

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.:

Response:

Our thoughts as to what should be taken account of in the draft license variation are set out in our response to question 3. We are concerned that as between ICSTIS and Ofcom it should be very clear as to who is responsible for what and which Code applies. There is a real danger that one could end up with the Broadcasting Code requiring one thing, the ICSTIS Code requiring another and with each lacking certainty and in places being in conflict with one another. This spectre of competing and conflicting code provisions will only damage the best intentions that broadcasters and Ofcom share in seeking to address the recent difficulties which have beset broadcast media. We would caution against an overly quick reaction involving the production of a ?political fix? which provides a result akin to a patchwork quilt of regulation, lacking consistency, transparency and which is ultimately damaging to broadcasters (in terms of cost and business viability), consumers (in terms of programme choice) and Ofcom in terms of its credibility.

In the absence of Ofcom?s decision on this consultation, it would be premature to engage in drafting which would require careful thought and input by a number of parties.

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.:

Response:

We would agree. Radio is an important medium which in many respects is competitive with television. Aside from ensuring that fair competition is not impeded, we feel that radio broadcasters in their daily interface with their listeners, should be required to adhere to the same principles of best practice applicable to television. Their listeners are, after all, consumers and they ought to be entitled to the same level of protection as applicable to television viewers. To differentiate between television and radio would be inconsistent with the broadcasting code which applies to both.

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.:

Response:

We would, with the reservations detailed below and consequential drafting amendments being made, be supportive of Option 3 on the basis that viewers should be treated as intelligent beings, capable of making rational choices if presented with information in a transparent and fair manner and that Ofcom should not seek to distort the market place by the application of regulations which would, as they presently stand, be discriminatory and anti-competitive.

Our reservations are as follows:

a. we feel ?the carve out? which is proposed, namely the application of rules 10.19 and 10.20 only to dedicated participation programmes is discriminatory in that it clearly favours non dedicated participation programmes which operate in a substantially similar manner eg: X-factor and many BBC programmes;
b. The restriction on using a callers number to generate further contact and the limitation of additional services to each callers interaction with the service conflicts with established principles of open competition. We feel that provided the callers number was fairly obtained, with their informed prior consent (as assisted by clear on-screen labeling and dialogue), in compliance with the ICSTIS Code, the Mobile Operators Code of Practice and more generally in accordance with the requirements of the Data Protection Act 1998, it would be wholly inappropriate for Ofcom to seek to fetter the ability of the broadcaster to continue to further communicate with their customer following the conclusion of the service, a fetter which does not apply to other business sectors;
c. It follows, subject to the consumer safeguards to which we refer, that we can see no justification for restricting broadcasters from using a callers number to generate further contact by SMS, MMS etc. Such a restriction would negatively impact on the consumers experience of the programme and the on-going value they derive from it. Consumers interface with a live broadcast is invariably not a single experience, but a

continuum in respect of which, of their own free and informed choice, they willingly participate.

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.:

Response:

We feel that the draft rules should be amended to take into account our observations set out above, where adequate explanation has already been provided. In addition, we do not feel that option 2 as presently proposed adequately addresses the following:

a. the dynamic and valuable changes in technology which drive the PTV marketplace;
b. the failure to address what happens to phone lines when not on air;
c. the unwarranted interference with freedom of consumer choice where on the basis of the published research it is simply not merited;
d. the negative economic impact visited on those broadcasters most likely to be affected;
e. the inherent anti-competitiveness within the option in that quite clearly it would permit programmes such as X-factor, Big Brother and similar to take votes throughout the week.

As indicated above, we do not believe that Ofcom should move directly from the outcome of its consultation to the implementation of new rules without further careful consideration of the comments received whether from ourselves or others and giving sufficient time in which broadcasters and others in the value chain can adjust to accommodate any changes required.

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.:

Response:

We feel the way in which this question has been phrased could be construed to suggest that Ofcom have already decided on the outcome of the consultation, namely that they are in favour of this option. We would trust this is not the case.

We do however agree that there should be no differentiation between dedicated PTV and PTV generally in that there should be a level playing field between the two with no market distortions brought about by a tier of regulation which fetters freedom of consumer choice and detracts from the UK?s role as being at the cutting edge of new technologies and their application.

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.:

Response:

We have already commented above on certain problems.

A major concern we have is that whilst for large broadcasters compliance with changes may be a cost they can readily absorb, for the smaller broadcaster, changes will take time to accommodate both in terms of their impact on any business model and the practical task of making changes to internal working practices, training, compliance etc.

The two stage nature of the consultation consultation process, led initially by the Ayre report and now by this further consultation into proposed licence changes, reflects on a sense of urgency arising out of a combination of factors including acknowledged failings by many different parties at many different levels. In our view, the temptation to proceed to a ?quick fix? should be avoided, since the broadcast sector is one of the most dynamic that exists and has a central place in the UK economy and the life of its consumers.

We are supportive of the need to consult but we are concerned that consultation should not simply be a process to be gone through but a genuine attempt to take on board, without pre-condition, the needs of consumers and the broadcast community which serve them.

We feel that there is a real danger that in the quest for a solution to the highly publicized and politically sensitive difficulties that have beset the broadcast sector, dedicated PTV in particular, is being used as a convenient scapegoat for many difficulties and failings which are attributable to the larger public service broadcasters. The fact that the consultations have sought to address both dedicated and non-dedicated PTV is in one sense logical but in another sense dangerously convenient were it to be seen as an excuse to weight the burden of new and restrictive regulation on the smaller or dedicated PTV broadcaster or to implement changes which are arguably discriminatory and anti-competitive or indeed conflicting as between the relevant codes.

Comments: