

Participation TV: Protecting viewers and consumers, and keeping advertising separate from editorial.



Response to consultation by the Premium Rate Association for and on behalf of its members.

October 2007

Introduction

The Premium Rate Association thanks Ofcom for this opportunity to add comment to this consultation piece.

As a non profit, membership driven, trade organisation operating in the Premium Rate telephony sector we welcome all relevant and appropriate regulatory change in this arena. We hope that our aims are in common with those held by Ofcom in that the desired outcome from this work will create an environment which would in turn help foster an increased level of consumer trust in both dedicated PTV and also any broadcast that features and promotes viewer/listener interaction through premium rate services.

We are pleased to note that Ofcom has shown great consideration to correctly identify and measure the commercial impacts on both broadcasters and the Premium Rate Sector of any new regulatory obligations.

The Association is keen to reiterate the findings of previous studies into the PTV market which have made it very clear that today's broadcast consumer enjoys the ability to interact with their programmes, and that Premium Rate Telephony is a fantastic method of facilitating this type of interaction and participation supplementing the broadcaster's abilities to communicate with their audience and offering new revenue opportunities.

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.

The PRA are in agreement with Richard Ayre's statements that "Broadcasters offering PRS have a set of obligations to individual customers which go beyond their traditional responsibilities" and that "further regulatory intervention must be centred upon securing the broadcaster's delivery of its obligations". For this reason and our understanding of the role and influence that the broadcaster has over the structure and delivery of the PRS in the PTV arena we believe that the responsibility for regulatory compliance must lie with the broadcaster.

On this point we think it important to re-emphasize that under Phonepay Plus' regulation of premium rate services the broadcaster would be defined as the Information Provider in the value chain and would no doubt be contractually obliged by their service provider to ensure that the service was run in a manner that complied with PPP's code of practice. Indeed PPP under its 11th Code are already able to raise breaches against the broadcaster in certain situations, so there is already a method of pointing the ownership of regulatory responsibility at the broadcasters.

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?

This option would seem to be an effective method to reaffirm ownership of regulatory responsibility.

Q3: Do you agree that there is a need for broadcasters to obtain 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.

In most circumstances it could be said that the proposal to introduce third-party auditing of broadcast PRS on an annual basis is an unwarranted burden, however in light of the last few month's revelations we believe that the introduction of such a system would currently help to reinforce the necessity for broadcasters to build in compliance to their PRS promotions. Consumer awareness that safeguards were now in place to protect them from the sort of failings that have frequently been reported across the media should hopefully start the trust rebuilding process so desperately needed if broadcasters are to encourage future viewer participation.

With this in mind the PRA consider that the introduction of a formalised and structured template for the audit would be advantageous to encourage completely transparent and

pertinent reporting of information that Ofcom deems necessary. This reasoning leads us to suggest that Option C is preferable in this circumstance.

We once again point to the fact that the obligation to provide premium rate services in an honest, decent and legal manner has always been in place via the Phonepay Plus Code of Practice and the ASA. It is our opinion that prompt and effective enforcement of the code at a much earlier stage could have avoided this whole situation.

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 adequate drafting proposals as appropriate.

We believe the proposed licence variation is well worded to achieve its goal and that it sufficiently void of technical references which would reduce its future application to a constantly and rapidly changing industry.

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.

It is our understanding that many of the issues which have been highlighted in the television sector have also been identified in radio broadcast PRS, it would therefore seem sensible for both genre of broadcaster to be obliged to accept the proposed variations to their licences.

Separation of editorial and advertising in dedicated PTV.

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

It is our belief that Option 3 “Classed as editorial, but carrying labelling” would provide the consumer with a greatly improved level of clarity of the commercial nature of the content that they are viewing and therefore strengthens the line of separation between advertising and editorial output.

The proposed alterations to the Broadcasting Code would also allow for this new business model “dedicated PTV” to grow and offer an alternative to the standard advertising based funding mechanisms whilst still affording the consumer greater understanding of what they are viewing and giving them all of the necessary regulatory protection they require.

However, we would like to temper this answer in light of recent findings and state that if regulatory failings are still found to be prevalent through monitoring or third party audit then Option 4 could always be introduced at a later stage.

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.

The proposed amendments which you enable the introduction of Options 2 and 3 seem fit for their purpose.

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.

The PRA agree that Option 2 is in essence a clarification of the existing code and could be applied across both television and radio output which encourage viewer interaction through the approved methods.

Q9: Has Ofcom correctly identified, in Section 6 and in the Impact Assessment in Annex 7, the various impacts arising from each option for dedicated PTV? Again, please give reasons.

The documented Impact Assessments of the various regulatory options provide a good overview of both the benefits / disadvantages and impacts of each proposal.

Conclusion

In summary we welcome Ofcom's revisiting of this arena which through lack of enforced regulation in recent times resulted in widespread consumer harm and lack of trust with has inevitably cause great commercial damage to our member's businesses and their industry.

We hope that this genre of broadcasting whether dedicated PRS or those shows which incorporate interaction though the use of PRS can now operate in a manner that is clear and transparent, so that consumer has all the information they need before making the decision to purchase.

It is our opinion that this clarity is absolutely necessary in order to restore consumer confidence which would then allow this important and enjoyable sector of broadcast to continue to grow and develop.

Our cautionary note to finish is that many organisations such as ours have repeatedly tried to draw the regulators attention to, what were obvious failings in the operation of the types of service. Whatever change is introduced here, its effect will only be felt if regulation is then enforced promptly and strongly.