



## RESPONSE TO OFCOM CONSULTATION ON PARTICIPATION TV

From PromoVeritas Ltd – the independent promotional verification service.

We welcome the comprehensive consultation document prepared by Ofcom on the subject of PRS.

Broadcast PRS has had a major impact on the dynamics of the industry and the views of the public. It used to be that the way to make money in broadcast was by spending it on good programmes that would attract large audiences, who whilst they would not pay directly for viewing, could be leveraged via increased advertising rates. The audience was a passive payer, who rewarded broadcasters supplying good quality programmes with their viewing time.

However PRS changed all that. Instead the audience became the direct payers and the primary task of the broadcaster became one of sucking money directly from the viewer via some form of paid for interaction in return for low grade entertainment and the hope of a cash prize.

PromoVeritas have been involved with several of the PRS TV services over the last 18 months, providing what was probably the first independent verification and audit service that the industry has seen. This included drafting of fair terms and conditions, the checking of internal procedures for call handling, no purchase necessary routes, winner selection, service provider systems and presenter guidelines. However perhaps the most crucial role was providing an ongoing service that checked every puzzle prior to broadcast.

As a result of our work within the industry, we fully support the principles behind the proposals being made in this consultation documents.

***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.***

**YES** – but aspect of that responsibility to be joint with their service providers.

The nature of today's television industry makes it very difficult for a broadcaster to assume total responsibility for items aired and all processes employed. This is primarily because so much film work is outsourced to independent production companies; indeed it is a requirement of a number of broadcasters that a certain % of all output is made using such arrangements.

However outsourcing should not absolve the broadcaster of all responsibilities, they should know enough about the content of the shows that they broadcast to be aware of the risks, to ask suppliers the right questions and to conduct spot checks as required, or engage the services of a trusted third party to assist them with their ongoing validation and verification.

In addition, where a breach of the regulations has occurred and the broadcaster is being investigated, they should be able to offer a defence of “due care and attention” provided they can demonstrate that they have a high level of checks in place. If so responsibility for the failings should be passed directly to the supply / external production company etc.

If this derogation were not to exist, and broadcasters to be solely responsible for PRS, there is a big risk that the nature of the TV market will change significantly. Broadcasters will seek to assume full control of their output and all elements of consumer interaction. They will bring services such as call and text handling in house. This may increase the perceived safety but it will stifle innovation and the development of a thriving independent and competitive service provider industry.

**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?**

**YES**, if it has to happen then a change to the licence is the best way to achieve this.

**Q3. 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.**

**YES** we do. PromoVeritas has been involved in the verification of PRS services for broadcast for the last two years and is fully aware of the difficulties and challenges involved in trying to run live shows. We believe that it is vital that where there is pay for entry consumer interaction there should also be independent verification to ensure that what is offered is fair and delivered in accordance with the rules.

This is entirely consistent with the rules of the CAP Code (as monitored by the ASA ) as followed by promoters in other industries. The CAP requires competitions to be judged by a panel with at least one independent judge, for prize draws to be selected on basis of chance and under independent supervision and instant win “golden ticket” type promotions to be run with the benefit of an independently audited statement confirming that the winning tickets have been fairly and randomly distributed.

Independent is loosely defined as “independent of the promoter and their intermediaries”, excluding those in the value chain such as service providers and broadcasters from being involved in judging or winner selection.

The CAP Code also has useful additional rules that OFCOM could consider, for example the publishing of winners details and the answers to questions.

The aim of the above rules are to provide consumers with confidence that they have a fair chance of winning, and with such confidence will come the increased likelihood that they will apply / enter, which has to be good for all in the industry.

Some of the main areas of risk within PRS TV are listed below together with the typical role that PromoVeritas have adopted with clients in order to deal with the issue.

Potential Issue	Example of issue	Risk	Role of Independent Verifier
Poorly conceived puzzle rules	Too hard, flawed, beyond logic	High	Established code of ethics and principles. Pre-approve all rule sets. Locked down and version controlled.
Mistakes in puzzle creation	Human error, creates an impossible puzzles	High	Puzzle creation restricted to a trained core team. No puzzle is aired without prior approval by Verifier.
Mistakes in puzzle graphics	Human error, or aired before approved	High	No puzzle is aired without prior approval by Verifier. Use a system of parallel codes, with key code held by verifier.
Errors in presentation	Erroneous or confusing words from presenter, eg " it is easy"	Med	Verifier agrees Presenter script guidelines of what not to say etc
Security of puzzles	Left around office for all to see, freelancers work on puzzles.	High	Clearly laid down processes for ensuring security of all rules & puzzles
Security of answers	Left around studio, not kept secure	High	Use of a computer based "puzzle checker" that avoids use of answers left on clipboards
Pricing errors	Poor communication with suppliers	Med	Develop rigid pre-broadcast testing protocols with random checks
Systems errors	No valid or functioning No Purchase Necessary route. Calls missed or avoided. Votes not counted	High	Develop rigid pre-broadcast testing protocols with random checks
Winner selection	Not random, internal callers selected, timing not consistent with stated rules	High	Ensure set up of the system is compliant
Prize management	Cheques not issued to correct winner, delayed	Low	Random checks on the fulfillment of prizes

No system reliant on humans can be totally safe, but having worked in this field for nearly 2 years and over 9,000 puzzles, we are pleased that none of our clients to date has had an upheld OFCOM adjudication.

Our verification work in this industry and others over the last six years has framed our views on the Options for independent verification outlined in the Consultation Document.

Option A Regular Verification , reporting on request.

This is neither viable nor comprehensive enough. A year is a long time in broadcasting, and producers are constantly coming up with new ideas, puzzles, challenges etc and these could easily escape external scrutiny.

Option C Detailed audit specification

This is significantly more onerous and prescriptive, than any of the other options, and so risks being rigid and inflexible enough to deal with the nature of the industry and the demands placed on it by creative broadcasters and their partners.

Option B Regular Verification, regular reporting

Out of the three options, this is **our preference** because it is tough but flexible, requiring broadcasters to create a system of audit that will show their compliance with the requirement of their licence, so it can be custom fit to their needs.

However we would submit that whilst this option may deal with some of the back end system issues that have plagued the industry, it is unlikely to alleviate the risk of the many other issues and risks that could occur on a daily basis – as outlined in the table above. The only way to deal with these is to have an ongoing verification service. Someone or an entity that checks the proposed output, that conducts regular checks ( At least fortnightly ) on the operational aspects of the programme and is there to act as source of independent advice and challenge all year round, not just every 12 months.

***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 drafting proposals as appropriate.***

There is no reference to the fact that competitions and games should be operated in accordance with the relevant statutory laws in particular the line between games of chance and games of skill, where if a charge is levied, the former could be illegal lotteries. The normal way of avoiding this issue is to provide an alternate free entry route, and the Gambling Act 2005 provides some useful guidance on the operation and communication of this “legal get-out”. We feel that this should be part of the licence variation

Possible draft addition :

v) games of chance, such as simple prize draws, should operate within the requirements of the law, with a valid alternate free entry route offering an equal chance of winning, and winners selected under independent supervision in a random manner.

vi) games of skill, should be mindful to ensure that the level of skill involved meets the requirements of all relevant statutes, most specifically the 2005 Gambling Act, or where payment is requested to enter, there is an alternate free entry route offering an equal chance of winning, and winners selected under independent supervision in a random manner

**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.**

YES we do believe that Radio should be included in these licence obligations. Although typically the value of prizes and the costs of entry tend to be lower, radio is still liable to the same risks of system failure, fraud, confusion and mishandling. In addition a format frequently used on radio is likely to be judged illegal under current statutes – the call up at a premium rate, and answer a question on air – and many other formats run the risk of not operating according to the highest standards, with winners selected more for their entertainment value, geographic location or quality of voice, rather than due to randomness (for a draw) or skill ( or a genuine competition) , email entries may be ignored, and there have been some recent examples of prizes not being what they were claimed to be.