



Yvonne Matthews  
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Content and Standards  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

17 October 2007

Dear Yvonne,

UTV Radio GB Limited (UTV Radio) welcomes the opportunity to respond to the consultation on the future regulation of Participation TV (PTV). Our response is set out below, and should be read in conjunction with that submitted by the RadioCentre.

Interaction with listeners has been (and will continue to be) a fundamental part of UTV Radio's national and local radio services. For example, listener interaction at our national speech service, talkSPORT, is a crucial component of the station's output, and the station receives not far short of one million calls and texts to the studio a year.

Given the importance of PRS to our business, and our commitment to Best Industry Practice in compliance, UTV Radio has developed clear internal policies for managing its PRS activities, and has always gone to great lengths to ensure all its activities in this regard are compliant with all ICSTIS, Ofcom and (more recently) Gambling Commission guidelines. As a result, responsibility for all our interactive commercial relationships and compliance across the entire group (INR and ILR) is centralised through one employee, and this senior employee can also call on several independent compliance consultants at any time for verification and support, as required.

Ahead of our responses to the specific questions raised by Ofcom, we would like to add our voice to the RadioCentre's view that this consultation devotes insufficient attention to the differences between participation in radio and television, and does not draw a sufficient distinction between the two, devoting little attention to the shape of the radio market and the nature of PRS usage within it.

While commercial radio has not been completely untouched by recent compliance issues in PRS, the most serious failings have occurred on television, and by any measure the problems in television are of a different order to any in radio.

We believe that the result of this lack of differentiation is that the provisional conclusions reached by Ofcom are not necessarily those that would have been suggested had a detailed exploration of the market for participation on radio been undertaken. In particular, we believe that Ofcom should reconsider whether its proposals are properly targeted towards areas in which there have been multiple reoccurrences of a specific compliance problem.

As Ofcom has said itself publicly, the last year has witnessed failures of 'compliance' rather than 'regulation', suggesting that the bulk of the existing regulation around competitions and use of PRS is fit for purpose. We do not believe that Ofcom has based its third-party verification proposals upon a sufficient understanding of their potential cost for the commercial radio sector. This is particularly evident in the impact assessment, which refers almost exclusively to PTV.

The regulator has a responsibility to interrogate the perception that there is a general problem with viewer/listener trust to discover the specific compliance problems that lie behind that. Any regulatory action that follows can then be targeted at the individual issues which Ofcom wishes to address, rather than introducing a layer of onerous scrutiny to an area of activity in which there is no evidence on an endemic problem. We would of course be willing to assist Ofcom as it builds its understanding in this regard.

We respond to Ofcom's specific questions as follows.

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 programs? Please explain why.

The recent compliance issues that we understand to have prompted this consultation were caused (in our view) by production and communication issues between mainly television broadcasters and services providers, with no-one accepting overall responsibility for compliance. However, this does not mean that all the broadcasters should have to become service providers themselves, as many smaller broadcasters (particularly radio broadcasters) simply could not justify the costs of the technology or legal infrastructure to support PRS activity. Furthermore, given the existence of fully compliant third party service providers in the market there is no need for them to do so.

UTV Radio does not directly operate its PRS services. In all cases third party service providers such as Elite, MIG and Million-2-1, manage and facilitate these services on our behalf. Whilst broadcasters must take responsibility for their output, including PRS, the burden of any regulation or compliance issues should continue to fall on third party service providers.

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 ?

At the moment there is a potential conflict between the Ofcom and ICSTIS regulations, where ICSTIS regulations currently hold the service providers and traffic carriers responsible for compliance rather than the broadcasters. This process has clearly failed in the past.

However, we do agree that a variation in licences to specifically deal with PRS, which also outlines the responsibilities of broadcasters for compliance, would be a positive step forward when implemented alongside other existing controls and regulations from other bodies such as ICSTIS and the Gambling Commission, assuming this could be implemented in a “joined-up” fashion.

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.

We are concerned that the Ofcom consultation and recommendations may not take into the account the “legality” of PRS services in the future, particularly since the implementation of the Gambling Act 2005 (GA 2005), which renders many premium rate services as potentially illegal (i.e. illegal lotteries operated without the necessary permits).

As outlined in our responses above, there is the potential conflict / repetition of regulation given the ICSTIS rules and procedures. We believe that an approach based on a prior permission or licensing regime (i.e. “preventative controls”) would provide much stronger compliance in the future rather than an auditing and checks post-events regime (i.e. “detective controls”). Further, we would argue that any solution must involve the other regulators, including the Gambling Commission (GC) and ICSTIS. Certainly the GC process and procedures already replicate many of those recommended within the Ofcom consultation, especially for products that are deemed to be lotteries.

Like the RadioCentre, we do not support the introduction of Options A, B or C in relation to paragraph 3. We believe that a third party auditing/verification requirement is neither proportionate nor targeted to the specific regulatory problems which Ofcom wishes to address in commercial radio. In fact, imposing this burden on the commercial radio sector risks having substantial unintended consequences, constituting both a cost in terms of time and resources, and a restriction on creativity and innovation. Furthermore, we do not believe that it would constitute a proportionate or targeted response to a specific regulatory problem. This is partly because the radio industry’s use of PRS is of a fundamentally different order to that of television.

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.

We broadly agree with the drafting proposed in paragraphs 1, 2(a) and 2(b) and in particular that the licensee must ensure “reasonable skill and care for selection of the means in the handling of communications received”. However, given the difficulties in being able to precisely quantify or qualify this requirement, Ofcom may find it appropriate to detail a more specific list of formal requirements. As an example, there is a situation in some PRS where some members of the public are disadvantaged compared to others (such as those without access to the internet in the case of free entry).

We would re-iterate that any new Ofcom proposed licensing requirements should not sensibly be implemented in isolation of the regulations enforced by ICSTIS, GC and the ASA. As an example, the Gambling Commission have already raised concerns that much of PRS activity on TV and Quiz TV maybe illegal lotteries and

we would argue that much of this activity is considered to be gaming within UK law. The Ofcom consultation document categorises Quiz TV as editorial and both GA 2005 and the recent ECJ statements may disagree with this conclusion.

We do not support the introduction of options A, B or C in relation to paragraph 3.

Q5. Do you agree that the draft licence obligations should not be limited to television but should also apply to radio broadcasters?

We agree that the Ofcom licence obligations, when agreed, should also apply to radio although it will be important to ensure that the differences between radio and TV promotions / editorial are considered. As an example, radio does not allow on screen information and controls, and radio is a very different medium and has very different licensing conditions to TV that will need to be reflected.

Q6. 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.

UTV Radio does not have a strong preference for any of the options proposed by Ofcom in this area. This is because only Option 2 extends to radio and it largely reflects a clarification of existing rules and practices. Nevertheless we do have a stake in efforts to ensure that trust for broadcasters remains high, given that our services are increasingly available side by side as platforms converge. For this reason we support the regulator's efforts to restrict any dishonest or fraudulent activity on the part of dedicated PTV operators.

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.

We would question the detail of this proposal around the following two points:

- a) **Dedicated participation programmes must not use a caller's number to generate further contact by voice service, SMS, MMS or other means.**

This clause is inappropriate given the CRM aspects and requirements for PRS type services where communication with the caller is an important part of the transparency, editorial and operation of such mechanics. We would agree that such communication should not be used for promoting other "products" which are unrelated to the caller's response or editorial, but communication with callers in this way is an important aspect of the editorial.

- b) **Credit card and other payment.**

In the future, payment by credit card or other payment methods may become more attractive to both the customer and broadcaster as technology and products in this area develop. As an example, many PRS solutions do not provide adequate protection for consumers, and services such as voting and competitions are more expensive when offered with payment via PRS when compared to credit card where there is no operator involved. We believe that developments in both payment technologies and the convergence of TV, radio and the web will develop an interacting model with broadcast material where credit card and other payment methods will be appropriate, practical and more beneficial to the consumer and therefore these options should not be excluded in the future.

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?

We agree that Option 2 could be applied to all PRS activity on TV and radio subject to our concerns around the payment methods and communication with viewers / listeners as outlined above.

Q9. 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.

As previously stated, our concern with the impact assessment in Annex 7 is that it lacks any significant analysis of the radio market and PRS usage within it. The presence of reports by Mediatique, The Communications Research Group and Essential suggests that the scope of Ofcom's work on participation in broadcasting was widened to include radio comparatively late in the day - presumably prompted by the Ayre Inquiry. We believe that Ofcom needs to undertake further impact assessments in relation to radio before finalising its proposals.

If you would like to discuss any of the above in more detail, or have any further clarifying questions which we can help Ofcom with, please do not hesitate to get in touch.

With kind regards

Yours sincerely

A handwritten signature in black ink, appearing to read 'Calum Macaulay', with a long, sweeping horizontal flourish extending to the right.

Calum Macaulay  
Commercial Director  
UTV Radio (GB) Limited