



Regulatory Impact Assessment

Regulatory Impact Assessment

This section deals with responses to the questions raised in 14.1, 14.2 and 14.3 of the Regulatory Impact Assessment (“RIA”) of the Consultation document.

General Summary of Responses

Responses to the Consultation

We have received substantive responses from Channel 4 and Five, ITV, S4C, Digital TV Production Company, Capital Radio, British Board of Film Classification (BBFC), Campaign Against Censorship (CAC), Ofwatch, the Commercial Radio Companies’ Association (CRCA), Emap, Maranatha, mediawatch-uk, the Satellite and Cable Broadcasters’ Group (SCBG), Melon Farmers, Xplicit, Ligali, United Christian Broadcasters, the Christian Broadcasting Council (CBC), the Church of England and the Evangelical Alliance. We also received responses from private individuals. We received two confidential responses.

General Comments

Emap Capital and CRCA felt that the ‘RIA has not identified or assessed the impact on the commercial radio sector of removing the current ability to run and trail commercial promotions within programming or to make promotional references to sponsors’ and requested further consultation with an RIA on these matters.

mediawatch-uk is concerned that there are not enough avenues for the public to inform Ofcom of their views and complaints.

Channel 4 and Five would welcome further dialogue with Ofcom once it has had time to consider their responses to the consultation.

The Digital TV Production Company notes paragraph 151 of the RIA says that the Broadcasting Code will come in force two months after publication and asks, why the delay?

An individual believes that imposing narrow minded restrictions upon others, without showing any proper evidence of harm is clearly unacceptable in any kind of free and democratic country.

Xplicit believes that the existing prohibition on R18 content (sexually explicit material) cannot be justified and says that this change should be effected as quickly as possible so that providers of this material do not lose out to competition on the internet or other European providers.

With respect to R18 content, Ofwatch believes that Ofcom should not make these decisions on the basis of the opinions of people who have no intention watching the services about which they complain.

Maranatha suggests that the Video Appeal Committee [who decision resulted in the re-classification of R18], as an unelected group, does not represent the public view, as evidenced by the level of complaints.

The BBFC notes that paragraph 40 of the RIA ought to state explicitly that under 18s have no legal access to licensed sex shops, amending the wording to: ‘in licensed sex shops from which children under eighteen are entirely excluded’. The BBFC also notes that within

paragraph 42 the reference to 'foreign material which does not go through the BBFC system' is a little misleading since it may be taken to imply that foreign material does not go through the BBFC at all, when in fact a high proportion of R18 submissions are foreign in origin.

An individual cannot understand, in the context set by the following quotations from the Ofcom paper, 'The new Broadcasting Code is based on the law not on the code of the legacy regulators' and 'all regulation in the proposed Broadcasting Code must be prescribed by law and necessary in a democratic society', how Ofcom can reasonably impose a prohibition on R18 content when harm is not shown in any of the evidence.

Ofcom response

We have discussed and clarified with CRCA, Capital and EMAP that the ability to run commercial promotions has not been removed. There has been no significant change here and the matter does not need to be included in the RIA.

There will be a consultation on the complaints and case handling procedure this autumn.

We have allowed two months from publication of the Broadcasting Code to its implementation to allow broadcasters time to comply programmes and schedules to take account of the new Broadcasting Code in their decision making and to train staff and those who work on programme production. It also enables all companies to commence on an equal footing at the same date where regulation has been removed.

R18 matters are dealt with the R18 section of this statement and are not dealt with here.

Questions

Question 14.1 *Has this RIA correctly identified the significant changes (as described in the opening paragraph of the RIA) made in this consultation paper? If not, what other changes are significant, and why?*

Responses to the Consultation

Correctly identified

Four private individuals and an individual believe all significant changes are identified.

The Evangelical Alliance and Maranatha agree that the RIA has identified significant changes. The Church of England says Ofcom has correctly identified the need for one code as a significant change.

ITV admits that significant change has been identified, but argues that the potential significance of all change has not.

S4C says significant changes have been identified in general.

An individual agrees that they have been correctly identified.

Other changes

An individual notes inconsistency between the Broadcasting Code and the RIA.

Ligali suggests that the RIA include a section on harm and offence making reference to ‘the duty to adhere to human rights, race relations, and race equality legislation’.

Ofcom response

We note the point made by Ligali. A reference to the expectation that broadcasters will comply with the law is made in the legislative background to the Broadcasting Code. It is not a matter for the RIA.

Question 14.2 *Do you disagree with the assessment of benefits and disadvantages drawn up in this RIA and, if so, how would you suggest it should be altered?*

Responses to the Consultation

The Church of England suggests that the acknowledgment of the different impacts of radio and TV be made clear.

The CBC believes that Ofcom has done a good overall job in assessing the benefits and disadvantages of possible changes to the Broadcasting Code.

Maranatha thinks that the benefits and disadvantages of possible changes to the Broadcasting Code have been presented fairly.

The Evangelical Alliance believes that the ‘spiritual element of human life needs to be included when drawing up both the Broadcasting Code and its RIA’.

Ligali and the Evangelical Alliance believe that their suggested modifications will be of benefit to both the broadcasters and Ofcom.

R18

Campaign group Melon Farmers believes that Ofcom has not adequately identified in RIA the benefits and disadvantages of the transmission of R18 content. In particular, it believes the RIA has failed to take into account of television delivery over broadband.

The Campaign against Censorship disagrees with the assessments and says protection for minors should be confined to non-subscription television programmes broadcast before the watershed. It says there should be a separate code for subscription 'adults only' television, equating with the R18 rules of the British Board for Film Classification.

Xplicit says that the existing total prohibition on broadcasting R18 content is not consistent with the position held by the BBFC, given that the restricted sale of R18 videos from licensed video shops may be equated with the restricted availability of R18 broadcasts from specialist licensed broadcasters. Xplicit further believes that the existing situation with proscription orders is unclear but that if it continues to outlaw R18 material then it should act to ban material from European competitors. Xplicit believes that R18 is already the 'generally accepted standard' for 'adult' videos and DVDs.

Xplicit further asks why, if the Government is so concerned about the effects of R18 material on the young, they have not used a proscription order since 1998. Xplicit believes that those who want to see this material banned are a minority and have a predominantly religious motivation and if there were to be further restrictions this would force many companies out of business. Xplicit believes it is inappropriate to base regulation upon assumptions but rather on evidence and do not believe that Ofcom would have to employ extra staff. Finally, Xplicit claims that the economic benefits are clear and broadcasters lose through the retention of over-regulation or even their improvement.

One individual believes the status quo is oppressive. British adults should have the same viewing rights as their European counterparts. Another individual agrees that UK adults should have the same viewing rights as their European counterparts.

Another individual adds: "The "usual" vices in under eighteens far outweigh those acquired by watching R18 material. Stakeholder groups that regard R18 material as offensive do not have to watch it. Formal Ofcom requirements will make access harder for the under eighteens, and some safeguards are already in place on subscription channels".

An individual disagrees with retaining the status quo and believes prohibitions on R18 should be removed. An individual notes that we have seen the likes of 'Baise Moi' on normal Satellite TV, and free to air R18 material in Spain does not seem to have had a negative effect on society.

Two individuals state that evidence shows a correlation between the removal of censorship restrictions and a decrease in sex crime in several countries (Sweden, Denmark, USA, Germany and Japan).

Ofwatch suggests that it is obvious that the RIA was written by different people with different ideas and there is no explanation as to how recommendation 62 (which was to maintain the prohibition on the broadcast of R18 content unless there are sufficient safeguards to protect under-18s) was arrived at. Therefore, Ofwatch believes that the RIA should read, 'R18 content should now be permitted because sufficient safeguards are available...' rather than 'R18 content will be prohibited unless sufficient safeguards are available...'

Another individual says that he expected a more positive approach where public consultation comes only after Ofcom has thought about new safeguards.

Another individual believes that different people have written different parts of the document and they clearly demonstrate different interpretations of freedom of speech. A proportion of the population being offended at the thought of what other people are watching is no justification for the restriction of R18 material given that overall public opinion is in favour and no harm proven. This individual goes on to assert that no proscription orders have been issued in recent times. If there was genuine concern then these would certainly have been used more. R18 material can also be downloaded from the internet, imported and bought from sex shops.

Material currently available is stronger than the standard 18 certification but not as strong as R18 material; the definition of what constitutes this material is not published, so people are not able to see in writing what they are and are not able currently to see on satellite television. The individual refers to the BBFC website, in support of the view that R18 style material in the US or Europe has not caused harm. This individual asserts that Ofcom has a legal duty to only impose the minimum restriction, given that they are attacking the right to freedom of expression.

One person says, 'I believe the nanny state should not be allowed to interfere with a person's freedom of expression'.

One person says that there should be deregulation; there is no reason why we need to be protected by 'big brother'.

An individual says that if Ofcom wants to prohibit R18 material 'it must properly show that prohibition is proportionate, necessary and justified'.

The Campaign against Censorship says television regulation in other European Union countries should be studied. The EU is one economic and cultural area, all of which is subject to the European Convention on Human Rights and its national broadcasting codes should thus be mutually compatible.

An individual believes the approach is inconsistent with the stated principle that Ofcom is an evidence based regulator, as they have gone for the status quo option.

One individual disagrees with some of the assessments in the RIA. Another concurs with the overall arguments, except with regard to R18 material. 'Public concern' may only be an issue because the UK is 30 years behind the rest of the world and has therefore denied the public access to this material for so long. If there were a foundation for such 'public concern', the internet would have been more stringently controlled and such material would never have been legalised, regardless of the restrictions placed upon it.

Ofcom response

We note the point made by the Church of England that radio and tv have different impact on their audience and this should be made clear. Where necessary we have created different rules in the Broadcasting Code for the different media. However, the relative impact of each of these is not universally agreed. For some, radio has the stronger impact, while for others it is television.

We also note the point made by the Evangelical Alliance regarding the spiritual dimension of the Broadcasting Code. Whilst Ofcom's duty is to set standards for broadcasters within the

context of the standards objectives in the Act, we have also sought advice from the Central Religious Advisory Committee and in particular on Section Four: Religion.

General comments regarding R18s are dealt with under that part of this statement which deals with Section Two: Harm and Offence of the draft code. The specific concern addressed by respondents was that there was not sufficient reasoning in the RIA to explain the R18 recommendation or that the reasoning was faulty or omitted essential material.

The R18 recommendation was a reflection of the legal duty placed on Ofcom to protect under-eighteens and to apply generally accepted standards to television services so as to provide adequate protection against harmful and offensive material.

Question 14.3: *Can you assist with information which will help us quantify the increased costs or savings of the various options in this RIA?*

Responses to the Consultation

R18

An individual believes that if broadcasting is restricted in the UK, then European and American competition may win out, causing a loss to the UK industry.

Two individuals note that adult service broadcasters are already starting to see competition from European satellite and broadband internet services. Unless domestic broadcasters are allowed the freedom to compete on a level playing field, they will lose increasing numbers of subscribers to these services.

Another confidential respondent says that should these restrictions not be lifted there will be a particularly negative effect caused by the expansion of high speed internet connections that will soon be able to deliver picture quality the equal of that available via satellite, which will have dire consequences both for these companies and also for the UK economy, which will miss out.

Ofwatch remarks on the high prices of R18 material from sex shops and says that the increase in quality of internet services will soon result in very strong competition, which will seriously hamper existing broadcasters unless these restrictions are lifted.

Xplicit believes that the internet will soon offer far more serious competition in the future and the need for consistent regulation between the media has never been greater.

Maranatha believes comments should not financially affect broadcasting bodies 'other than those engaged in pornography'.

Campaign organisation Melon Farmers suggests there is a tremendous market for pornography and believes satellite and cable TV would capture a large part of this.

Ofcom response

We note the comments above about the financial effects of the broadcast of R18 (or R18 plus) content. They have been taken into account in Ofcom's consideration of the issue.