


Cover sheet for response to an Ofcom consultation

BASIC DETAILS			
Consultation title:	BROADCASTING CODE REVIEW		
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Address (if not received by email):			
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Name	CHRIS WISSUN	Signed (if hard copy)	

ITV's Response to Ofcom's Broadcasting Code Review

ITV welcomes the opportunity to comment on Ofcom's proposed revision of the Broadcasting Code ("the Code"), in the light of Ofcom's revised remit of full external regulation of content standards for the BBC's UK public broadcasting services, and the new requirement for BBC ODPS to comply with the provisions of the Code insofar as Ofcom determines them relevant. We have discussed the proposals with our fellow Channel Three licensee STV, and they support our response below.

We note that the decision taken in the new Royal Charter and Agreement for the Code to also cover BBC ODPS effectively creates a two-tier system of regulation for on demand services (ie one standard for the BBC ODPS, and the existing and very different statutory Rules for all other notified ODPS services). This is likely to be a source of confusion to consumers. Therefore the Code should seek to make this distinction as clear as possible.

Whilst we appreciate why the proposed drafting seeks to insert references to BBC ODPS throughout the Code, we are concerned that the overall result is somewhat ungainly and confusing, and leaves the resulting text more complex, legalistic and technical than before, to the detriment of both broadcasters using it as a daily working document to make compliance decisions, and the wider public seeking to understand the obligations of all broadcasters in relation to content standards.

We respond to the three questions posed by the Consultation below.

Q1 - Proposed Changes to the Code in relation to BBC broadcasting services

We appreciate that the Code required some revision to make clear the new legislative background, and the extension of Ofcom's remit to regulate content over all of the BBC's UK broadcasting services. We largely agree with the proposed amendments flowing specifically from this change. We also acknowledge and have no issue with minor amendments made by Ofcom in the light of the Equality Act 2010 and relevant NI legislation, and other minor amendments such as the amendment in Part One extending the criteria for the imposition of sanctions, which merely reflects existing Ofcom policy in this area.

We suggest that this proposed revision should be followed by a much wider review of the entire Code in due course, once the new regulatory regime has had time to "bed down", and of the Cross Promotion Code, which we believe is now outdated and due for some reconsideration.

We have the following comments on minor drafting points:

Section Nine's introduction – this Section is concerned with commercial references in television programming, as its un-amended title still states. We therefore consider it confusing to omit many of the references in the text to “commercial references”. We also see no good reason to alter this to the wider phrase “commercial activity” in the Note on the section. But if it is Ofcom's intention to do so, we would suggest the additional wording to the Note is also confusing, and should be further amended to say: “*whether it is carried out **by or** on behalf of commercial or non-commercial entities*”.

Section Nine's Notes to product placement – we consider that all of these Notes can and should now be omitted. Note number 1 (previously number 2) should be omitted, as it is not necessary to the understanding of these Rules, and is potentially confusing since it give no indication of which “paid-for” references might not have a “commercial purpose”. We think Note number 2 (previously 3) should likewise be omitted - the retention of the reference to Rule 9.1 and Section Five makes little sense without the context of the preceding sentence, which Ofcom proposes to omit, or any other explanatory material as to the particular relevance of these parts of the Code.

Section Nine's Notes to Rule 9.18 – we consider that this would be a good opportunity to revise this note in order to make clearer the position clearer in relation to references to a sponsor's products, services, or trademarks in a sponsored programme which do not arise from the sponsorship or other commercial arrangement but from independent editorial decision making. We consider that the present definition of “incidental” is confusing here, in that it might suggest that only references that are accidental or fleeting are acceptable in these circumstances. We suggest:

“Where an editorial reference to the sponsor (or its products services or trade marks) in a sponsored programme can be shown not to result from any commercial arrangement between the sponsor and broadcaster (and/or programme-maker and/or connected person), it will not be considered as product placement, but it must still comply with Rules 9.1 to 9.5’.

Q2 - Proposed Changes to the Code in relation to BBC ODPS

We have two broad criticisms of the proposed changes in relation to BBC ODPS.

Firstly, we consider that the addition of repetitive references to BBC ODPS throughout the body of the Code, and particularly in Section 1, is unnecessary and confusing, both for broadcast practitioners and lay readers. We believe it would greatly assist in the comprehension of the revised Code to simply set out in a footnote to each Section the relevant Rules which will now also apply to BBC OPDS as well as broadcast content, rather than to add these references to the text of every relevant Rule.

Second, we do not consider that the proposed “equivalent protection” for children to scheduling requirements in relation to ODPS content is helpful or necessary in the draft amendment to Section One of the Code.

The watershed is a cornerstone concept of broadcast regulation, and this scheduling convention is a key aspect of how children are presently protected from broadcast content that may be unsuitable for them. The obligation on broadcasters in this regard is very different to the obligation on BBC ODPS. Conversely, parents have an established and well-understood obligation to decide whether to prevent their children from watching material that is scheduled post-watershed and may be unsuitable for them. By their very nature there is no direct equivalent to these established obligations in relation to on demand services. These services necessarily deploy other methods than scheduling to protect children, most obviously by providing appropriate guidance information, and parental locking options (or mandatory PIN systems for adult sex material or R-18 material).

We do not believe that the chosen phrase “content likely to be accessed by children” is a helpful or appropriate way of characterizing what would in broadcasting terms be termed “pre-watershed content”. This content can be viewed on broadcast by any children available to view, and who happens to be watching television unsupervised at the scheduled time. On demand content by contrast can be accessed at any time, but only where parents have allowed their children access to the necessary technology to do so, and have chosen not to protect them from certain types of unsuitable content via available PIN protection systems.

We therefore suggest that the scheduling requirements in the Code have no relevance to BBC ODPS, and that these references to content “likely to be accessed by children” will be simply confusing to consumers.

We also consider some of the listed factors affecting whether “content is likely to be accessed by children” are fundamentally flawed. The second bullet point (nature of access) is unnecessary – either the BBC ODPS has sufficient systematic measures in place to protect children from unsuitable content, or it has not, and this is irrelevant to the content of a specific programme. The third bullet point (prominence and position) is wholly illogical – it cannot be correct that the BBC ODPS should not be able to make content prominent on the service, simply because it is not suitable for children. The necessary requirement is whether there are suitable protection measures in place in relation to such content. BBC ODPS currently appears to have sufficient parental controls in place, in line with industry standards elsewhere.

Since it is only BBC ODPS content, and not any other ODPS content, that is subject to the requirements of the Code, we suggest that the systematic arrangements that the BBC ODPS has in place to protect children from unsuitable ODPS content could simply be reviewed and acknowledged by Ofcom to be sufficient, rather than seeking to create an entirely new raft of unwieldy and unnecessary Code measures, particularly in Sections One and Two, that have no relevance to any service other than BBC ODPS.

Q3 – Proposed inclusion of ODPS Rules in Part Three of the new Code document

We agree with Ofcom that the ODPS Rules should be included in Part Three of the new Code document. However, we consider that the Code could and should make it clearer, perhaps by way of an explanatory passage in bold within the section setting out the legislative background to the Code eg

“In relation to on demand services, the Code applies only to the BBC as provider of BBC OPDS. All other ODPS services notified to Ofcom providing ODPS content are governed by the OPDS Rules in Part Three”.

6 February 2017