

Ofcom Content Sanctions Committee

It is Ofcom policy to state the full language used on air by broadcasters who are the subject of a sanction. Some of the language used in this decision may therefore cause offence.

Consideration of sanction against:	MTV Networks Europe (“the Licensee” or “MTV Networks”), in respect of its channels TMF, MTV France, MTV UK and MTV Hits (each a “Channel” and together “the Channels”);
For:	<p>Breaches of Ofcom’s Broadcasting Code (“the Code”) in respect of:</p> <p>Rule 1.3: “Children must also be protected by appropriate scheduling from material that is unsuitable for them” (TMF, MTV UK, and MTV Hits);</p> <p>Rule 1.4: “Television broadcasters must observe the watershed” (TMF and MTV UK);</p> <p>Rule 1.14 “The most offensive language must not be broadcast before the watershed or when children are particularly likely to be listening” (TMF, MTV UK and MTV Hits);</p> <p>Rule 2.3 “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context” (MTV France and MTV Hits); and</p> <p>Condition 11 of the Licence: “Failure to supply recordings” (MTV France).</p>
On:	<p>TMF – broadcast on 24 June 2006 & 24 July 2007; MTV France – broadcast on 24 December 2006; MTV UK (now MTV1) – broadcast on 25 September 2006, 23 October 2006 & 14 September 2007; and MTV Hits – broadcast on 22 January 2007 & 15 August 2007</p>
Decision:	To impose an aggregate financial penalty on MTV Networks of £255,000 (payable to HM Paymaster General). This consists of fines related to each of the Channels as follows: £80,000 on TMF; £35,000 on MTV France; £80,000 on MTV UK; and £60,000 on MTV Hits.

Summary

- 1.1 For the reasons set out in full in the Sanction Decision (see section 9 below), under powers delegated from the Ofcom Board to Ofcom's Content Sanctions Committee ("the Committee"), the Committee decided to impose a substantial financial penalty on MTV Networks in light of the very serious nature of its persistent failure to ensure compliance with Ofcom's Broadcasting Code ("the Code").
- 1.2 TMF, MTV France, MTV UK and MTV Hits are music video and general entertainment channels owned and operated by MTV Networks. MTV Networks holds Ofcom licences in respect of these four services and 28 channels in total. The Licensee also controls the centralised team responsible for compliance at all these 28 services.
- 1.3 Ofcom received a number of complaints about highly offensive language and material being broadcast on these four channels, mostly before the watershed. In particular, Ofcom received complaints about the following programmes.

TMF

- 1.4 *Ultimate 50 Videos* featured a music video by the band Aphex Twin called "Windowlicker", broadcast on 24 June 2006 at 20:20. Four viewers complained about the repeated use of the words "motherfucker", "fuck you" and "fuck". They were concerned at the highly offensive nature of this language pre-watershed. Separately twelve viewers complained about the broadcast on seven occasions on 24 July 2007 between 09:48 and 15:15 of a trailer for a factual entertainment programme called *Totally Jodie Marsh* which contained the following sentence: "I just don't want you settling down with some fucking wanker from a modelling agency".

MTV France

- 1.5 A viewer complained that racist and homophobic text messages in French were transmitted at around 01:00 in a programme called *Belge Chat* (transmitted on 24 December 2006 at 01:00). The translated texts said "the white race will triumph", "death to all immigrants", "death to gays" and "immigrants are going to fuck your mother". When requested by Ofcom, MTV Networks said it was unable to provide Ofcom with a copy of the recording as transmitted because of a technical problem.

MTV UK

- 1.6 At 16:30 on 25 September 2006 and 23 October 2006, MTV UK broadcast different editions of the same programme, *Totally Boyband*. This was a reality show following the launch of a new band. Three viewers complained to Ofcom that the programme transmitted on 25 September 2006 featured extensive offensive language including "fuck", "shit", and "bollocks". Two viewers complained to Ofcom that on 23 October 2006 another edition of the same programme contained such offensive language as "a big cock", "fucking boring", and "fuck it up".
- 1.7 *Never Before Scene: Superbad* was a film review programme transmitted on 14 September 2007 at 09:00. A viewer complained that this programme

broadcast foul language including “*what the fuck*”, “*hold his fucking hand...fucking hold my hand*”, and “*give me a fucking warning before you do that*” that was inappropriate for transmission before the watershed.

MTV Hits

- 1.8 *Mr Know It All* is a text messaging service broadcast on screen by this music video channel. One viewer complained to Ofcom that the programme featured offensive texts transmitted on 22 January 2007 at around 19:30 such as:

Q: “*What is a spunkbelly?*”

A: “*A ‘spunkbelly’ is a collection of semen which has been consumed which collects in the stomach giving the appearance of a beerbelly. Very nice.*”

- 1.9 *Totally Scott-Lee*, transmitted on 15 August 2007 at 10:30, was a factual entertainment programme about a pop singer, Lisa Scott-Lee. Two viewers complained to Ofcom that the words “*fuck*”, “*fucked*” and “*fucking*” were repeatedly used in the programme and that this was inappropriate for transmission before the watershed.

- 1.10 Ofcom investigated the complaints and recorded breaches of the Code against TMF, MTV France, MTV UK and MTV Hits. The Rules contravened were 1.3 (inappropriate scheduling); 1.4 (broadcasters must observe the watershed); Rule 1.14 (most offensive language must not be broadcast before the watershed); and Rule 2.3 (offensive language must be justified by context). MTV France was also found to have breached Condition 11 of its licence by failing to supply a copy of the programme as broadcast.

- 1.11 Ofcom took into account all the representations put forward by the Licensee. These included that the Licensee had:

- since September 2007 taken a number of steps to strengthen and improve its compliance systems and procedures appreciably;
- recruited a new management team with compliance as a top priority;
- increased its compliance staff, introduced new compliance training at all levels of the organisation and made staff much more seriously accountable;
- admitted and apologised for all the breaches (none of which were pre-meditated or involved any financial benefit to MTV); and
- cooperated fully with Ofcom’s investigations.

- 1.12 In deciding to impose a substantial financial penalty in this case, the Committee took into account principally the serious, persistent and repeated nature of the breaches. In particular, Ofcom noted that:

- the Licensee had a very poor record of compliance before June 2006;
- the breaches occurred following earlier, repeated and specific warnings to MTV Networks from Ofcom;
- the contraventions of the Code had the potential to cause considerable harm and offence to viewers in general and to children in particular;
- over a period of at least fifteen months before September 2007 the Licensee had failed to exercise reasonable care in the management

and supervision of the Channels so as to ensure compliance with the Code;

- TMF, MTV UK, and MTV Hits had repeatedly breached the Code;
- overall there was clear evidence of a widespread failure of compliance at MTV Networks;
- the Licensee is one of the largest commercial broadcasters operating a major international brand of channels with a particularly strong following among younger audiences; and
- the financial penalty needed to be sufficiently high to act as an effective incentive to ensure future compliance.

1.13 Pop video and entertainment channels like those controlled by MTV Networks attract large numbers of viewers under fifteen, and so have a responsibility to these children and their parents to ensure their compliance arrangements are robust and effective. MTV Networks failed in its responsibility. Before September 2007 it did not take decisive and firm action to fulfil its compliance responsibilities. Should there be further breaches of the Code by this Licensee which warrant consideration of a sanction, the Committee will regard them with the utmost seriousness.

1.14 In this case the Code had been repeatedly breached and, despite warnings and interventions from Ofcom, it appeared that senior management had not been adequately aware of or had ignored persistent breaches of the Code. Management failed to take effective action to prevent their recurrence, despite the existence of a centralised compliance department. As a result Ofcom has some very serious concerns about MTV Network's compliance structures, which had been totally inadequate. The extensive improvements which now appear to have been made have been noted. Given its target audience, however, Ofcom expects MTV Networks to take its responsibilities far more seriously than before.

1.15 In light of the serious and repeated nature of the breaches, and having given careful consideration to the Licensee's written and oral representations (see sections 7 and 8 below) and having regard to Ofcom's Penalty Guidelines, the Committee decided it was appropriate and proportionate in the circumstances to impose an aggregate financial penalty on MTV Networks of **£255,000** (payable to HM Paymaster General). This consists of fines related to each of the Channels as follows: £80,000 on TMF; £35,000 on MTV France; £80,000 on MTV UK; and £60,000 on MTV Hits.

Background

2.1 MTV Networks holds 28 Ofcom licences which broadcast music and youth services under the MTV and TMF names. Some of these channels are tailored to specific regions or countries in Europe, such as MTV France. MTV Networks is the licence holder for all 28 service licences and the broadcast compliance for these channels is managed centrally by MTV Networks' office in London.

2.2 Between May 2004 and August 2006, MTV Networks had a poor compliance record of eight breaches of the Code. As a result, Ofcom specifically warned

MTV Networks of its concerns about the number of compliance errors made by some of the channels it controlled.¹

TMF

Windowlicker

- 2.3 On 24 June 2006 at 20:20, TMF broadcast *Ultimate 50 Videos*, a one off special programme produced by MTV. It included a music video from the band Aphex Twin entitled "*Windowlicker*". Ofcom received four complaints from viewers that the broadcast on 24 June 2006 featured the repeated use of the words "*motherfucker*", "*fuck you*" and "*fuck*". The complainants were concerned at the level and repeated use and offensive nature of this language for pre-watershed transmission.

Totally Jodie Marsh

- 2.4 On 24 July 2007 at 09:48, 10:08, 11:31, 12:59, 14:43, 14:55 and 15:15, TMF broadcast a trailer for *Totally Jodie Marsh*, a factual entertainment programme in which glamour model and reality TV celebrity Jodie Marsh auditioned male members of the public for the opportunity to marry her. Twelve viewers complained to Ofcom that the trailer contained the following sentence: "*I just don't want you settling down with some fucking wanker from a modelling agency*".

MTV France

Belge Chat

- 2.5 On 24 December 2006 at 01:00, MTV France, a regional variant of MTV's general output, broadcast *Belge Chat*. The channel features local advertising, some French language music videos and programming skewed towards a French speaking audience. As part of its late night service, MTV France, in partnership with a local text messaging service called "*Belge Chat*", superimposes text messages sent in by viewers in the form of a 'strap' on the lower-third of the screen. A viewer complained that texts were transmitted in French which when translated said "*the white race will triumph*", "*death to all immigrants*", "*death to gays*" and "*immigrants are going to fuck your mother*".

MTV UK

Totally Boyband

- 2.6 On 25 September 2006 at 16:30, MTV UK broadcast an edition of *Totally Boyband*. A viewer complained that this programme, a reality show following the launch of a new band comprising ex-members of boy bands, featured extensive offensive language including "*fuck*", "*bollocks*", and "*crap*". Additionally, while Ofcom was investigating this broadcast, two viewers complained to Ofcom that on 23 October 2006, also at 16:30, another edition of *Totally Boyband* contained the following offensive language: "*a big cock*",

¹ See for example Ofcom Broadcast Bulletin 33, 25 April 2005, http://www.ofcom.org.uk/tv/obb/prog_cb/pcb62/issue33.pdf; and Bulletin 62, 12 June 2006, http://www.ofcom.org.uk/tv/obb/prog_cb/pcb33/issue62.pdf

“shit”, “fucking boring”, “whore”, “fuck it up”, “fuck up tonight” and “good little fuckers”.

Never Before Scene

- 2.7 On 14 September at 09:00, MTV UK broadcast *Never Before Scene*. This is a film review programme which broadcast clips from a film called *Superbad* containing the following very offensive language: *“what the fuck”, “hold his fucking hand...fucking hold my hand”, “give me a fucking warning before you do that”, “they fucking shot Seth” and “filthy dick jokes”.* One viewer complained to Ofcom that the language used was inappropriate for transmission before the watershed.

MTV Hits

Mr Know-It-All

- 2.8 On 22 January 2007 at 19:30 MTV Hits broadcast *Mr Know-It-All*. This programme provides a text messaging service for viewers who can text questions which are answered by *Mr Know-It-All* in a ‘strap’ on the lower third of the screen. One viewer complained to Ofcom that the programme featured (at different times) the following texts on screen.

Q: *“What is a spunkbelly?”*

A: *“A ‘spunkbelly’ is a collection of semen which has been consumed which collects in the stomach giving the appearance of a beerbelly. Very nice.”*

Q: *“Will I ever have finger sex with a girl?”*

A: *“I believe that you will within the next six months. I believe that it will be the start of a special relationship. She will be called Sally.”*

Totally Scott-Lee

- 2.9 On 15 August 2007 at 10:30, MTV Hits broadcast *Totally Scott-Lee*, a factual entertainment programme featuring Lisa Scott Lee, formerly of the pop group Steps, as she pursued a solo career. Two viewers complained to Ofcom that the words *“fuck”, “fucked” and “fucking”* appeared repeatedly during the programme and that this was inappropriate for transmission before the watershed

Legal Framework

- 3.1 Ofcom has a duty under section 319 of the Communications Act 2003 (“the Act”) to set standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives. The standards objectives are set out in section 319(2) of the Act. They include that: persons under eighteen are protected (section 319(2)(a)); and generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material (section 319(2)(f)).

- 3.2 In discharging its functions, Ofcom's principal duties are to further the interests of citizens in relation to communications matters and the interests of consumers (section 3(1)) and to secure a number of other matters. These include the application in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services (section 3(2)(e)).
- 3.3 In performing these duties, Ofcom is also required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles representing best regulatory practice (section 3(3)); and where relevant, a number of other considerations including:
- The need to secure that the application in the case of television and radio services of standards relating to harm and offence is in the manner that best guarantees an appropriate level of freedom of expression (section 3(4)(g)); and
 - The vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection (section 3(4)(h)).
- 3.4 Under section 325 of the Act, every programme service licensed by a Broadcasting Act licence includes conditions for securing that the standards set by Ofcom under section 319 are observed. If Ofcom is satisfied that the holder of a licence to provide a television licensable content service has contravened a condition of the licence, it may impose the following sanctions:
- issue a direction not to repeat a programme;
 - issue a direction to broadcast a correction or a statement of Ofcom's finding;
 - impose a financial penalty; and/or
 - revoke the licence.

Remedial action and penalties

- 3.5 Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or statement of findings (or both) or not to repeat a programme on contravention of a licence condition.
- 3.6 Section 237 of the Act provides Ofcom with the power to impose a financial penalty on the holder of a TLCS licence of a maximum of whichever is the greater of £250,000 and 5% of its qualifying revenue.
- 3.7 Section 238 of the Act provides Ofcom with the power to revoke a TLCS licence.

The Human Rights Act 1998

- 3.8 Under section 6 of the Human Rights Act 1998, there is a duty on Ofcom (as a public authority) to ensure that it does not act in a way which is incompatible with the European Convention of Human Rights (“the Convention”).
- 3.9 Article 10 of the Convention provides for the right to freedom of expression. It encompasses the broadcaster’s right to “impart information and ideas” and also the audience’s “right to receive information and ideas without interference by public authority”. Such rights may only be restricted if the restrictions are *“prescribed in law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary”* (Article 10(2) of the Convention).
- 3.10 Ofcom must exercise its duty in light of these rights and not interfere with the exercise of these rights in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

Ofcom Broadcasting Code

- 3.11 Standards set by Ofcom in accordance with section 319 of the Act are set out in Ofcom’s Broadcasting Code (“the Code”) which came into force on 25 July 2005.
- 3.12 Accompanying Guidance Notes to each section of the Code are published and from time to time updated, on the Ofcom website. The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.

Relevant provisions of the Ofcom Broadcasting Code

- 3.13 Rule 1.3: “Children must also be protected by appropriate scheduling from material that is unsuitable for them”.
- 3.14 Rule 1.4: “Television broadcasters must observe the watershed”.
- 3.15 Rule 1.14: “The most offensive language must not be broadcast before the watershed or when children are particularly likely to be listening.”
- 3.16 Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context.”
- 3.17 Condition 11 of the Licence: “the Licensee shall...make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a period of 60 days” and “...at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction”

Ofcom's investigations and MTV Networks' responses

- 4.1 Ofcom carried out an investigation of programming broadcast by channels whose licences are held by MTV Networks (namely TMF, MTV France, MTV UK and MTV Hits) after receiving a number of complaints about the broadcast of inappropriate language and the most offensive language before the watershed (see section 2 above).

TMF

Windowlicker

- 4.2 The Licensee apologised to the viewers who had complained and to any other viewers who were offended. It said that it had broadcast an on-air apology after it became aware of the error. MTV Networks also stated that it was considering upgrading and/or replacing its systems software.

Totally Jodie Marsh

- 4.3 MTV Networks stated that this post-watershed version of the trailer was transmitted before the watershed due to human error. It said that as a precautionary measure all post-watershed trailers for *Totally Jodie Marsh* were dropped from the schedule.

MTV France

Belge Chat

- 4.4 The Licensee informed Ofcom that due to technical difficulties, it was unable to provide Ofcom with a recording of the relevant part of the programme with the text messages displayed in it. In relation to the offensive texts, MTV Networks said that they were transmitted because the broadcast was left "unmonitored" for a short period of time when a gap occurred between the departure of one moderator and the arrival of another.

MTV UK

Totally BoyBand

- 4.5 MTV Networks regretted the errors that occurred in these editions of *Totally Boyband* and stated it had broadcast an on-air apology after the edition of the programme broadcast on 25 September 2006. It said that the offensive language resulted from human error in the editing process whereby a tape that had been partially edited was classified as fully edited.

Never Before Scene: Superbad

- 4.6 The Licensee responded by stating that the programme was transmitted at an inappropriate time and offered apologies for the offence given. It stated that the problem arose due to human error.

MTV Hits

Mr Know-It-All

- 4.7 MTV Networks initially apologised for any offence caused but confirmed that the broadcast was overseen by an experienced moderator who assessed the texts in question and took the view that they were not inappropriate for the time of transmission. However, MTV Networks later accepted that the content complained of was not suitable for the time broadcast.

Totally Scott-Lee

- 4.8 MTV Networks apologised that the post-watershed version of *Totally Scott-Lee* was broadcast during the day instead of the pre-watershed version. It explained that the error occurred because the programme pre-dated a practice adopted previously by MTV of placing the timing restriction in the title of the programme. The Licensee said that as soon as it became aware of the error it broadcast an on-air apology. To prevent any repeat of the error, all post 21:00 versions of the programme were removed from the broadcast schedule.

Ofcom's findings on the breaches

- 5.1 On 14 September and 14 December 2007 Ofcom recorded breaches of the following Code Rules against the relevant MTV services as set out below in paragraph 5.2: 1.3 (inappropriate scheduling); 1.4 (broadcasters must observe the watershed); Rule 1.14 (most offensive language must not be broadcast before the watershed); and Rule 2.3 (offensive language or content must be justified by context).

- 5.2 The Code breaches were recorded as follows:

- against TMF for *Ultimate 50 Videos* (Rules 1.3 and 1.14) and the trailer for *Totally Jodie Marsh* (Rule 1.14);
- against MTV France for offensive text messages in *Belge Chat* (Rule 2.3) and breach of Condition 11 of its Licence for failing to supply a recording of its output;
- against MTV UK for *Totally Boyband* (Rules 1.3, 1.4, 1.14 and 2.3) and for *Never Before Scene* (Rule 1.14); and
- against MTV Hits for *Mr Know-It-All* (Rules 1.3 and 2.3) and for *Totally Scott-Lee* (Rule 1.14).

- 5.3 These breaches resulted from the most offensive language and material being broadcast on TMF, MTV UK and MTV Hits (in some cases repeatedly) before the watershed. Ofcom concluded that this material was not justified by the context of broadcasts that were likely to appeal to children; and that the likely audience would have expected to have been protected from the most offensive language and material in such programming. In the case of MTV France, highly offensive text messages were broadcast in the early hours of the morning, which were not justified by the context, and the broadcaster failed to supply Ofcom on request with a copy of the programme complained about, in breach of its licence condition requiring it to do so. In view of the serious, persistent and repeated nature of the breaches, Ofcom's preliminary recommendation was that these contraventions should be referred to its

Content Sanctions Committee (“the Committee”) for consideration of a statutory sanction. In response the Licensee made written representations which are summarised in Section 6 below.

MTV Networks’s written representations on the imposition of a sanction

6.1 In three separate submissions to Ofcom dated 28 September 2007, 20 December 2007 and 2 April 2008, MTV Networks stated that its senior management had implemented measures to strengthen and improve its compliance processes. In summary, these measures included that all production and scheduling staff would in future play a more active role in ensuring compliance of its channel with the Code. MTV Networks also said that it had introduced a six-point plan. This included:

- only having either ‘clean’, pre-watershed or post-watershed trailers, and not a combination of both;
- a general policy of not re-versioning programmes to produce ‘clean’, pre-watershed versions of post-watershed programmes;
- conducting a complete review of MTV Network’s programme archive that was planned for broadcast over the next twelve months to ensure that all programmes are correctly labelled with the relevant time restriction;
- keeping only one version of a long form programme (with limited exceptions) in order to reduce any chance of mis-scheduling;
- a stipulation that all staff are personally accountable for compliance issues within their area of responsibility.

In addition, MTV Networks was implementing a new scheduling system which would automatically prevent programmes being scheduled in contravention of their time restrictions.

6.2 The Licensee stated that moderators of text messages had been reminded of the need to follow the revised moderation guide and that a refresher training programme for moderators would be held in 2008. In relation to the new scheduling system, the Licensee explained that two channels (TMF and MTV(R)) have already been migrated to this system and that further channels were planned to migrate to this new system in 2008 with the remainder of its channels migrating in 2009. MTV Networks also stated that none of the actions that led to the breaches were deliberate and no profit was derived. It said that it had already made a significant additional financial commitment to compliance and that while it understood the possibility of the Committee imposing a substantial financial penalty, any penalty should be appropriate and proportionate.

Referral to the Content Sanctions Committee

7.1 Taking all the circumstances into account, and in particular the seriousness and (in the case of TMF, MTV UK and MTV Hits) the repeated nature of the breaches, and potential harm to viewers under the age of 18, Ofcom considered that the breaches of Rules 1.3, 1.4, 1.14, and 2.3 on TMF, MTV France, MTV UK, and MTV Hits were sufficiently serious to warrant the consideration of the imposition of a statutory sanction.

- 7.2 Ofcom therefore referred the case to the Committee for the consideration of a statutory sanction. Accordingly, MTV Networks was invited to attend an oral hearing before the Committee.

Sanctions Hearing

- 8.1 Ofcom's Content Sanctions Committee ("the Committee") held an oral hearing on 12 May 2008. At this meeting MTV Networks was given the opportunity to make oral representations to the Committee before it decided whether the breaches warranted the imposition of a statutory sanction, and if so, at what level. The Committee was addressed on behalf of MTV Networks by David Lynn, Executive Vice President and Managing Director; Roger James, Vice President, Business and Legal Affairs; and Simon Hughes, Senior Counsel Broadcast Standards.
- 8.2 MTV Networks acknowledged the seriousness of the breaches recorded against the channels TMF, MTV France, MTV UK and MTV Hits and it apologised for the failure of its compliance procedures.
- 8.3 David Lynn stated that he took up appointment as Managing Director in April 2007. One of his first priorities upon appointment was to recruit a new management team and to address the issues that had arisen with MTV Networks' compliance procedures. Mr Lynn said that when he became aware of the failure in compliance procedures in September 2007, further measures were taken to remedy weaknesses in the compliance process. This included the implementation of a six-point plan (already detailed in Section 7 above). These measures were accompanied by large group presentations attended by relevant staff in which the new compliance plan was explained by an external consultant.
- 8.4 In addition to the six-point plan, MTV Networks stated that one-to-one training sessions and regular meetings were being held for relevant compliance staff and with senior management. Staff had been made aware of their accountability in this area and that the company would not hesitate to take disciplinary action where necessary. Also, MTV Networks had implemented a new channel management scheduling system called "PTS" which automatically prevented programmes being scheduled in contravention of their time restrictions. This, effectively, discounted the likelihood of human error in this area. MTV Networks said that two of MTV Networks' channels had already migrated to this new system, with further channels migrating by October 2008 and three more by 2009.
- 8.5 The Licensee said that the most recent improvements made have been extensive and have strengthened MTV Networks' compliance.
- 8.6 MTV Networks stated that if the Committee was minded to impose a financial sanction, it should take into account that MTV Networks had: co-operated fully with Ofcom's investigation; made changes in its management and improvements in its compliance procedures; and financially committed resources into training its staff and implementing new systems. The Licensee also said that the breaches were not pre-meditated and no financial profit was derived by MTV Networks.

- 8.7 The Committee queried how seriously senior MTV executives had taken the Licensee's poor compliance record and how MTV Networks had changed the compliance culture that existed at the time of the breaches.
- 8.8 In implementing the new six-point plan to improve compliance, the Licensee confirmed that it had held large group presentations with staff (a method it had not used before) and that disciplinary action would be considered for members of staff who had received the new training but failed to implement the new compliance procedures. It said that the failures in its compliance record and the new measures implemented as a result of those failures had been communicated to senior management of the companies which owned MTV Networks.
- 8.9 The Committee asked the Licensee what was meant when it stated that staff would be held "personally accountable" for compliance failures and how much it had invested financially in the new systems to improve compliance.
- 8.10 The Licensee said that programme and executive producers are personally accountable for the compliance of the programmes that they prepare. Although they have the compliance team and various other more junior levels to assist in the production process, the ultimate responsibility lay with the programme and executive producers. MTV Networks also said that although it could not provide an exact figure for the amount it had spent implementing the new measures, it would estimate that the investment was considerable, probably reaching into hundreds of thousands of pounds.
- 8.11 MTV Networks stated that although remedial action had been taken to ensure compliance, more remained to be done. It said that the project it had undertaken to implement these measures was a large one and that it was a priority with senior management and staff alike. It was also being monitored by MTV Networks' owners, including Viacom senior management in Washington DC.

Sanctions Decision

- 9.1 The Committee considered carefully the serious and repeated nature of the breaches of the Code recorded against each of the Channels together with all the written and oral submissions provided by the Licensee. MTV Networks holds all four licences for the Channels, and the arrangements for compliance are common to all the Channels and are carried out centrally by MTV Networks. For the reasons set out below, the Committee therefore decided that it was appropriate in all circumstances to impose an aggregate financial penalty on the Licensee, but that this should be determined by reference to the conduct of each of the Channels. In deciding on the level of financial penalty the Committee had regard to Ofcom's Penalty Guidelines².

² Ofcom's Penalty Guidelines are available at <http://www.ofcom.org.uk/about/accoun/pg/>. Section 392 of the Communications Act 2003 requires Ofcom to prepare and publish a statement containing guidelines it proposes to follow in determining the amount of any penalties imposed by Ofcom, which Ofcom must have regard to in setting any penalty.

Imposition of financial penalty on MTV Networks

- 9.2 Ofcom has generally imposed a financial penalty on licensees in circumstances where the nature of the breaches or the reasons for the compliance failures were particularly serious, or where they were persistent, repeated, reckless, or negligent (that is to say where a Licensee has failed to exercise reasonable care). Having carefully considered all the evidence the Committee was in no doubt in this case that the breaches of the Code recorded against the Channels were sufficiently serious and (and in the case of TMF, MTV UK and MTV Hits) repeated as to merit a financial penalty in respect of the breaches on each of the Channels. The breaches also warranted a financial penalty because the Licensee failed to exercise reasonable care in the management and supervision of the Channels over a period of at least fifteen months, as shown earlier in this adjudication and further below.
- 9.2 The Committee considered that MTV Networks – which controls and ultimately holds the Ofcom licences for each of the Channels - had negligently allowed a culture to develop and continue in which failure to comply with the Code was widespread and persistent. For example, the Committee noted disturbing evidence from MTV Networks' correspondence with Ofcom in April 2007 that at least one relatively senior figure in the compliance department appeared to believe it was acceptable to transmit post-watershed material after 7pm. In the Committee's view this demonstrated a clear failure to understand the Licensee's fundamental obligations under the Code to comply with the 9pm watershed requirements and a failure of senior management to oversee and convey the Licensee's compliance responsibilities. Having regard to all the evidence, it was evident to the Committee that there had been a systemic failure of MTV Network's compliance function and responsibilities.
- 9.3 The Committee considered that the breaches of the Code by the Channels were serious also because each occurred following earlier, repeated Ofcom warnings to MTV Networks, and to TMF in particular. For example, warnings were given in Broadcast Bulletin 33 (25 April 2005) to MTV 2 and MTV UK, and a specific warning to TMF in Bulletin 62 (12 June 2006) about various compliance failures. In addition, in Bulletin 89 (16 July 2007), Ofcom issued a special Note to Broadcasters warning all licensees of the need for robust compliance procedures to prevent the broadcast of unsuitable material before the watershed. Three Channels (TMF, MTV Hits, and MTV UK) broadcast material in breach of Rule 1.14 of the Code after this date.
- 9.4 One of Ofcom's statutory duties is to provide members of the public, and children in particular, with adequate protection from offensive and harmful material in television services. Therefore each breach of the Code was serious because of the potential harm and offence caused to viewers in general and/or to children in particular. A number of viewers complained to Ofcom about content broadcast on the Channels over a period of fifteen months starting in June 2006. Many were especially concerned about the broadcast of the most offensive language pre-watershed.
- 9.5 The Committee also noted that over extended periods of time several of the Channels repeatedly breached the Code, and in some cases repeatedly breached the same Rules of the Code. This, in the Committee's view,

compounded the seriousness of the breaches. TMF, MTV UK and MTV Hits in particular had repeatedly breached the Code. (See paragraph 5.2 above).

9.6 The Committee decided that the Licensee failed to exercise reasonable care in the management and supervision of the Channels in that:

- MTV Networks controls and ultimately holds the Ofcom licences for each of the Channels;
- the Licensee has confirmed that all editorial compliance decisions for the Channels are taken by a centralised compliance and legal team based at MTV Networks' offices in London;
- the Licensee and the Channels were all on notice of Ofcom's concerns about compliance at the Channels as a result of the warnings contained in Broadcast Bulletins 33 and 62, and various findings against MTV channels in previous Broadcast Bulletins;
- the Channels and MTV Networks between September 2006 and September 2007 (when the first batch of breaches of the Code which are the subject of this sanctions decision were recorded by Ofcom) issued a series of apologies and gave a series of assurances to Ofcom that compliance would be materially improved; but
- nonetheless, compliance did not improve and Ofcom recorded breaches of the Code against the Channels for various broadcasts made following these assurances at separate dates between 24 June 2006 and 14 September 2007³.

9.7 For all these reasons, and in light of all the relevant circumstances, the Committee concluded that the breaches of Rules 1.3, 1.4, 1.14, 2.3 and condition 11 of the licence (in the case of MTV France) by the Channels are sufficiently serious, and in some cases also repeated, so as to merit a financial penalty.

9.8 Before considering the breaches Channel by Channel, the Committee considered the following general points applicable to all the Channels when deciding on an appropriate and proportionate level of penalty. These included: the need to ensure that penalties will act as a sufficient incentive to comply; the effect of any relevant precedents; audience expectations; and factors relevant to all the Channels tending either to increase the level of penalty or decrease it.

Incentive to comply

9.9 The Committee considered that the financial penalty in the case of each Channel should be sufficiently significant to act as a deterrent against a repeat of these or similar breaches. The Committee noted that this was not the first time Ofcom had received assurances that compliance procedures would be improved but these previous assurances appeared to have had little impact in view of the current breaches. However, the Committee also noted the change in senior management at MTV Networks and its apparent strong commitment to investing in new systems and compliance procedures. Nonetheless, the Committee remained concerned to ensure that there could

³ The Committee also noted that, although not referred to the Committee for consideration of a sanction, Ofcom recorded a further breach of the Code against TMF on 4 March 2008. This was for broadcasting at 19.30 on 30 December 2007 *The Best of Orange Playlist – 2007 Best Guests* which contained offensive language and inappropriate sexual and drug references.

be no doubt on this occasion that it was critical that the Licensee's compliance procedures and arrangements are robust and well enough resourced that the Code is not breached in the future by the Channels or other licensed services under MTV Networks' control. In particular, the Committee was concerned to ensure that this would be appreciated at the very highest level of MTV's controlling organisation. In all the circumstances, the Committee believed that the imposition of a significant financial penalty for the breaches recorded against each of the Channels would be both appropriate and proportionate.

- 9.10 In deciding on a suitable level of penalty the Committee believed it was relevant to take into account the substantial size and qualifying revenue of each of the Channels. MTV Networks is a commercially successful licence-holder generating through the Channels very considerable qualifying revenue, and is in turn part of a major international business (Viacom).

Precedents

- 9.11 There are two relevant precedents which the Committee considered carefully. The first is the Kiss FM case of 20 June 2006⁴. Kiss FM was referred to the Committee for both serious breaches of Rules concerning fairness and privacy, and serious breaches involving standards issues. The standards breaches related to material broadcast over a period of just over six months in a breakfast show and so concerned primarily Rules to protect children, including Rules 1.3 and 1.14 (and the equivalent of Rule 1.2 in the ex-Radio Authority Programme Code). The material included use of offensive, inappropriate, and the most offensive language, as well as inappropriate sexual references. Kiss FM was fined £100,000 specifically for the standards breaches. In reaching this decision, the Committee took particular account of the serious and repeated number of the standards breaches, and the fact that the compliance procedures in place when they occurred were "wholly inadequate."
- 9.12 The Committee acknowledges that there are, inevitably, a number of factual differences between the standards breaches in the *Kiss FM* case and those here relating to each of the Channels. For example, with *Kiss FM*, the breaches took place over a period of around six months, were confined to one particular programme and one presenter, and largely related to live discussion. In the Committee's view however both the present MTV case involving the Channels and *Kiss FM* have at their heart services where breaches took place over extended periods of time (over fifteen months in the present case), both concerned breaches which involved a failure to give adequate protection to children in particular, and in both cases there was clear evidence that (despite assurances to Ofcom) the licensees' compliance procedures were wholly inadequate. Both cases also involved major companies, MTV and Emap Radio, in their respective industries of television and radio. The Committee therefore had regard to *Kiss FM* as a helpful precedent in setting the appropriate level of penalty for each of the Channels.
- 9.13 The Committee noted that the Licensee had referred to a second precedent: the *Channel U* sanction case dated 21 June 2005⁵. This concerned a single music channel that broadcast urban music videos and culture from the hip

⁴ http://www.ofcom.org.uk/tv/obb/ocsc_adjud/kiss100.pdf

⁵ http://www.ofcom.org.uk/tv/obb/ocsc_adjud/Achannelu.pdf

hop world. It was found to have breached various rules in the (ITC) regulatory Code in force at the time at various dates in March, May and June 2004. In particular the channel showed sexually explicit material contained in a pop video and broadcast inappropriate language in a video before the watershed. The Committee took into account “the licensee’s history of compliance failure and the repeated and sustained nature of the breaches” in deciding to impose a financial penalty of £18,000.

- 9.14 The Committee considers that the circumstances of the breaches by each of the Channels merit a considerably higher financial penalty than the £18,000 imposed in *Channel U*. These circumstances include: *Channel U* was a very small licensee, while each of the Channels is a larger service with correspondingly greater qualifying revenue and is in turn part of a major global brand (MTV) and international media company (Viacom); and, as explained above, the breaches by each of the Channels were serious, persistent and either sustained (see below in relation to *Windowlicker* on TMF) or, in many cases, repeated (e.g. *Totally Jodie Marsh* on TMF) and were the responsibility of the Licensee’s single compliance department.
- 9.15 The Licensee has also argued in its written representations that in many of the cases where a substantial fine has been imposed by the Committee in the past the breaches of the Code were deliberate and/or the result of a desire to make a profit. In response the Committee points out that this was not true of recent Ofcom cases involving PRS services and competitions in particular, where substantial fines were imposed. In these cases the breaches of the Code were not deliberate and/or not motivated by profit, but can best be characterised as negligent or reckless. *Kiss FM* is a different example of where a significant fine was imposed and the breaches of the Code were neither deliberate nor motivated by profit.

Degree of harm and offence caused

- 9.16 The Committee’s view was that, although the degree of harm and offence caused by the breaches of the Code varied from Channel to Channel, overall the breaches had the potential to cause considerable harm and offence to viewers in general and to those under fifteen in particular.

Duration and repetition of the contraventions

- 9.17 Although the duration and degree of repetition of the breaches varied from Channel to Channel, the overall picture was one of systemic compliance failure across the Channels over a period of at least fifteen months between June 2006 and September 2007, combined with the fact that the breaches occurred following earlier, repeated Ofcom warnings to MTV Networks. This consideration was one of the most important which the Committee took into account in deciding that substantial financial penalties for each of the Channels were necessary and appropriate in this case.

Audience expectations

- 9.18 The importance of this factor, in the Committee’s opinion, varied to some extent from Channel to Channel. For the most part however the breaches concerned the broadcast of offensive or potentially harmful material before the 21:00 watershed. The times of pre-watershed broadcast varied. Some breaches occurred at breakfast time (e.g. *Superbad*); others were repeated

across the whole day (e.g. *Totally Jodie Marsh*); others when it was likely children had just returned from school (e.g. *Totally Boyband*).

- 9.19 Ofcom is under a statutory duty to ensure “persons under eighteen are protected” (Communications Act 2003, section 319(2)(a)). The Committee was concerned that many parents had a reasonable expectation that their children and those under fifteen in particular, could be allowed to watch MTV music channels freely before the 21:00 watershed without fear that they would be exposed to the most offensive language. To this extent and in this respect, MTV Networks, like other broadcasters whose content was likely to attract many under-eighteens, had a serious responsibility to ensure its content complied in particular with Section One of the Code (Protecting the Under-Eighteens).

Factors increasing level of penalty

- 9.20 In deciding that substantial fines were necessary and appropriate for all of the Channels, the Committee had regard to the following factors: the Code was repeatedly breached; breaches of the same nature continued to occur despite warnings and interventions from Ofcom; senior management clearly should have known about the persistent breaches and taken effective action to prevent their recurrence; and, despite the existence of a centralised compliance department, the absence and repeated failure of internal mechanisms to prevent the breaches. The extent to which the Committee took account of these factors varied from Channel to Channel, depending on the individual facts.

Factors decreasing level of penalty

- 9.21 In mitigation, the Committee noted the considerable steps taken by Licensee since September 2007 to improve compliance and change the culture at the Channels (see above the Licensee’s written and oral representations). It recognised the personal commitment of the Managing Director of MTV Networks radically to improve compliance, and that all the changes would take some time to be completed. (On the other hand, the Committee noted that the Licensee had given assurances to Ofcom before that compliance would be overhauled but totally ineffective action had been taken by management, and that the six-point plan to improve compliance had only commenced belatedly in September 2007.) Ofcom therefore looks forward to seeing the results of MTV Networks’ initiative to introduce robust and adequate compliance arrangements. The Committee will, however, view with the utmost seriousness any further compliance failures by the Licensee which might be referred to it for consideration of a sanction.
- 9.22 MTV Networks had admitted all the breaches (although in the case of MTV Hits (*Mr Know-It-All*) only in December 2007) and apologised for them, sometimes contacting complainants directly to apologise. The Committee took this into account in mitigation. The Licensee had also cooperated fully with Ofcom in the appropriate manner expected of a responsible Licensee during the investigations into the breaches. The Committee had some regard to this second factor in mitigation but did not regard it as especially significant.

TMF

Windowlicker

- 9.23 The Committee considered first the breaches involving the music video *Windowlicker*. In this case, as with all the other breaches, the Committee had regard to the Penalty Guidelines and all other relevant circumstances in determining the starting point for the financial penalty. It noted first the seriousness of the contravention. The video was broadcast before the watershed and contained sustained and repeated use of the most offensive language over a period of several minutes. It was not a live broadcast and therefore compliance problems were both more foreseeable and manageable. As a substantial aggravating factor the Committee took account of the fact that TMF had a very poor compliance record before the *Windowlicker* video was broadcast on 24 June 2006. Between 21 October 2004 and 4 April 2006 Ofcom had recorded four breaches of the Code against TMF. In view of these previous breaches, the management of MTV Networks was clearly on notice of its weak compliance function but nonetheless took no or totally insufficient remedial action to effect appropriate changes to its compliance procedures.

Jodie Marsh

- 9.24 The Committee first noted that this breach occurred over a year after *Windowlicker*. This provided even further evidence of the serious deficiencies in compliance procedures referred to in relation to *Windowlicker*, in particular because the contravention regarding *Jodie Marsh* occurred long after MTV Networks admitted (in September 2006) the breach concerning *Windowlicker* and had promised to improve compliance. Whilst this trailer involved only one use of the most offensive language, the seriousness of the breach was aggravated by the fact that the trailer was repeated seven times throughout the day on 24 July 2007 between 09:48 and 15:15, at times when children were likely to be watching, some of them unaccompanied by a parent or adult. The Channel clearly did not have adequate compliance procedures in place to monitor output to ensure that breaches of the Code of this nature were spotted on transmission. MTV Networks was only alerted to the problem by complaints from the public to its website. This was not acceptable.
- 9.25 In deciding on the appropriate size of a financial penalty in the case of TMF case, the Committee considered it should be sufficiently significant to act as a deterrent against a repeat of these or similar breaches (see paragraphs 9.9 and 9.10 above). The Committee also had regard to the two relevant precedents discussed above – *Kiss FM* and *Channel U* – and all the various points made in paragraphs 9.11-9.15 relating to these cases. As regards TMF in particular, the Committee took account of the fact that the breaches by TMF – as with the *Kiss FM* ones – were related to one licence only, but that *Kiss FM*'s overall compliance record was better than TMF's before the sanctionable breaches occurred.
- 9.26 The Committee considers that the circumstances of the breaches by TMF, as with the other Channels, merit a considerably higher financial penalty than the £18,000 imposed in *Channel U*. These circumstances include the facts that: Channel U was a very small licensee, while TMF is a much larger service with correspondingly greater qualifying revenue and is in turn part of a major global brand (MTV) and international media company (Viacom); the TMF breaches were serious, persistent and repeated for the reasons stated above;

and also because the compliance record of TMF between 21 October 2004 and 30 December 2007 was particularly poor⁶.

- 9.27 Taking into account all the relevant circumstances, including the Licensee's representations, and factors both tending to increase or decrease the level of penalty (in particular the repeated breaches of the Code and the failure of management to take corrective action earlier on the one hand, and the Licensee admitting the breaches and recently taking steps to improve compliance on the other), the Committee decided that TMF should be fined **£80,000**.

MTV France

Belge Chat

- 9.28 In considering these breaches of Rule 2.3 and Condition 11 of the Licence, the Committee first had regard to all the relevant general factors discussed above (paragraphs 9.9-9.22). What distinguished the seriousness of the breaches in this case were in particular: the racial and homophobic tone of the offensive texts; the fact that Ofcom had already recorded a breach of the Code against another service controlled by MTV Networks, MTV Dance for broadcasting on 4 August 2006 at 19:20 inflammatory sectarian text messages (Bulletin 74, 27 November 2006, see weblink) and that as a result MTV Networks stated that it would update its internal training programme for text to screen moderators; the fact that, having already been warned by Ofcom about the need to moderate texts with more care, MTV Networks did not ensure that MTV France did so; the fact that Ofcom's investigation was hampered by the failure of MTV France to supply a recording of the material as broadcast (in breach of Condition 11 of the licence); and that audience expectations are clearly that texts of this highly offensive nature are not shown on licensed services.
- 9.29 In mitigation, the Committee took into account in particular that the texts were broadcast very early in the morning and so the audience was likely to have been relatively small. It also noted the statement by MTV Networks that during the six years that *Belge Chat* has operated on MTV France, totalling 30 million text messages, it has received only two complaints about them; and that the Licensee completely condemns any racist or homophobic language and the sentiments expressed on *Belge Chat* were totally abhorrent to the Licensee.
- 9.30 Taking into account all the relevant circumstances, including the Licensee's representations, and factors both tending to increase or decrease the level of penalty (in particular the failure of management to take corrective action earlier on the one hand, and the Licensee admitting the breaches and recently taking steps to improve compliance on the other), the Committee decided that a financial penalty of **£35,000** should be imposed on MTV France.

⁶ Four breaches of the Code were recorded against TMF between 21 October 2004 and 4 April 2006 before *Windowlicker* was broadcast on 24 June 2006; the *Jodie Marsh* trailer was shown after MTV Networks had admitted that *Windowlicker* had breached the Code and the Licensee had promised to improve compliance; and then on 30 December 2007 TMF broadcast *The Best of Orange Playlist*, which Ofcom found in breach of Rules 1.10, 1.16 and 1.17 on 4 March 2008.

MTV UK

Totally Boyband

- 9.31 A substantial fine was necessary and appropriate in this case in the Committee's view for a number of reasons. Both broadcasts (25 September and 23 October 2006) contained blatant offensive language throughout but nonetheless were shown at 16:30 when a number of young children were likely to be watching. Compliance procedures were so poor at the time at MTV UK that not only was this programme which was clearly inappropriate for broadcast pre-watershed shown at 16:30, but a different edition of the same programme containing highly offensive language was transmitted a month later after Ofcom was investigating the original breach. These were two clear, serious and repeated breaches of the Code.

Never Before Scene: Superbad

- 9.32 Despite having already admitted and apologised to Ofcom for the two, repeated breaches relating to *Totally Boyband*, MTV UK showed *Never Before Scene: Superbad* on 14 September 2007. This film review programme was broadcast at 09:00, again at a time when a number of young children were likely to be watching. It included several examples of blatant foul language.
- 9.33 The Committee also took account of all the relevant general factors discussed above (paragraphs 9.9-9.22). In deciding on the level of fine against MTV UK, the Committee noted that together these were three cases of sustained and offensive bad language broadcast pre-watershed which occurred over a considerable period of time. The breach relating to *Superbad* was made more serious by the fact that the Licensee had already admitted and apologised for the contraventions concerning *Totally Boyband* and occurred at a time when licensee was already on notice from Ofcom of its weak compliance in this area and had promised to improve compliance. In addition, the Committee had regard to the fact that all these programmes were produced and edited in advance and therefore there was every opportunity to comply them correctly: the broadcasts were not of live events, over which a Licensee has correspondingly less control. The qualifying revenue of MTV UK was noticeably greater than that of the other Channels and the Committee decided this was a relevant factor to consider when setting a fine intended to act as an incentive to ensure compliance.
- 9.34 As a mitigating factor, although MTV UK's compliance record was not unblemished, Ofcom had not previously recorded any breaches of the Code against MTV UK of a similar nature.
- 9.35 Taking into account all the relevant circumstances, including the Licensee's representations, and factors both tending to increase or decrease the level of penalty (in particular the repeated breaches of the Code and the failure of management to take corrective action earlier on the one hand, and the Licensee admitting the breaches and recently taking steps to improve compliance on the other), the Committee decided that MTV UK should be fined **£80,000**.

MTV Hits

Mr Know It All

- 9.36 Although the Licensee claimed that these texts of this nature were intended to be light-hearted and were deliberately scheduled after 19:00, the Committee found them grotesque, unpleasant and offensive for transmission on a channel aimed at the youth music market. They were clearly unsuitable for broadcast at any time before the 21:00 watershed. The Committee noted that MTV Networks appeared at first to wish to justify the broadcast of these texts at 19:30, before revising that view and admitting in December 2007 that they were unsuitable for broadcast at that time.

Totally Scott-Lee

- 9.37 This was another serious breach of the Code because the programme, broadcast at 09:30, included repeated use of the most offensive language ("fuck" and its derivatives) around ten times. It is likely that a number of children, some very young, were able to view the programme at this time. This contravention happened in August 2007, almost a year after the broadcast of *Totally Boyband*, another 'fly-on-wall' type programme (on MTV UK but nevertheless compiled by the same team at MTV Networks) already being investigated by Ofcom. The management of MTV Networks were therefore clearly on notice of the wholly foreseeable compliance issues that might arise with such programmes made about pop bands but failed to take any decisive corrective action.
- 9.38 In considering these breaches of Rules 1.3, 1.14 and 2.3 together, the Committee took account of all the relevant general issues discussed above (paragraphs 9.9-9.22), as well as the factors just discussed related specifically to MTV Hits. In mitigation, it was noted that MTV Hits as a Channel had a very good compliance record before these breaches were recorded against it.
- 9.39 Taking into account all the relevant circumstances, including the Licensee's representations, and factors both tending to increase or decrease the level of penalty (in particular the repeated breaches of the Code and the failure of management to take corrective action earlier on the one hand, and the Licensee recently taking steps to improve compliance on the other), the Committee decided that a financial penalty of **£60,000** should be imposed on MTV Hits.

Conclusion

- 9.40 The broadcast of the most offensive language before the watershed is totally unacceptable, except in the most exceptional circumstances. It has the potential to cause offence to viewers in general and in particular breaches the Code's requirement for protection of children. This is especially so if material is scheduled – as in these cases – at times when it is likely young children are likely to be watching, some of them unaccompanied. Pop video and entertainment channels like those controlled by MTV Networks attract large numbers of viewers under fifteen, and so have a responsibility to these children and their parents to ensure their compliance arrangements are robust and effective.

- 9.41 In this case, however, MTV Networks signally failed before September 2007 to take decisive and firm action to fulfil its compliance responsibilities. Despite numerous breaches of the Code recorded against the Channels, warnings from Ofcom, a lengthy correspondence with Ofcom about these breaches lasting over fifteen months, and earlier assurances from the management of the Licensee, nothing of substance happened to improve compliance until September 2007.
- 9.42 Ofcom notes the subsequent personal commitment of the top management at MTV Networks properly to overhaul its compliance arrangements and hopes they will be successful. The Licensee should be under no doubt, however, that should further breaches occur which warrant consideration of a sanction, the Committee will regard them with the utmost seriousness.
- 9.43 Having considered the relevant facts as outlined above and all the representations made by MTV Networks, the Committee decided to impose an aggregate financial penalty on MTV Networks of **£255,000** (payable to HM Paymaster General). This consists of fines related to each of the Channels as follows: £80,000 on TMF; £35,000 on MTV France; £80,000 on MTV UK; and £60,000 on MTV Hits. The Committee considers this penalty to be proportionate and appropriate in all the circumstances.

Content Sanctions Committee

Philip Graf
Richard Ayre
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4 June 2008