

# Ofcom Content Sanctions Committee

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It is Ofcom policy to state the language used on air by broadcasters who are the subject of a sanction adjudicated on by the Content Sanctions Committee where it is relevant to the case. Some of the language used in this decision may therefore cause offence.

**Consideration of sanction  
against:**

Satellite Entertainment Limited ("SEL" or "the Licensee") in respect of its service *SportxxxBabes* ("the Channel") TLCS 763.

**For:**

Breaches of Ofcom's Broadcasting Code ("the Code") in respect of:

Rule 1.24: "Premium subscription services and pay per view/night services may broadcast 'adult-sex' material between 2200 and 0530 provided that [in addition to other protections]:

- there is a mandatory PIN protected encryption system, or other equivalent protection, that seeks satisfactorily to restrict access solely to those authorised to view; and
- there are measures in place that ensure that the subscriber is an adult;"

Rule 2.1: "Generally accepted standards must be 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 harmful and/or offensive material;" and

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."

**On:**

26 February 2007, 13 March 2007 and 17 March 2007.

**Decision:**

To impose a financial penalty (payable to HM Paymaster General) of **£20,000**.

## 1. Summary

- 1.1 For the reasons set out in full below, under powers delegated from the Ofcom Board to Ofcom's Content Sanctions Committee ("the Committee"), the Committee has decided to impose a statutory sanction on SEL. This is in light of the serious and repeated nature of the Licensee's failure to ensure compliance with the Code in its service *SportxxxBabes*.
- 1.2 *SportxxxBabes* is an 'adult chat' channel that broadcasts without encryption and is listed in the adult section of the Sky Electronic Programme Guide ("EPG"). It shows live programming using female presenters (known as "babes"), who invite viewers to contact them using premium rate services ("PRS") for 'adult' chat.
- 1.3 Ofcom received three complaints about the explicit sexual nature of the unencrypted content broadcast on the Channel on 26 February 2007, 13 March 2007 and 17 March 2007.
- 1.4 The programming on these three days which was investigated included sequences apparently showing intercourse, oral-genital contact, masturbation, the use of dildos, a woman gagged with her knickers, and full nudity. In each case the most intimate detail was pixellated.
- 1.5 Ofcom assessed the material broadcast between 21:45 and 00:00 on the dates in question and concluded that the explicitness of the sexual content was wholly unacceptable for broadcast on a free-to-air channel. It was considered to be 'adult-sex' material and fell under Rule 1.24 and so should have been broadcast under encryption and in line with the other requirements of Rule 1.24. In addition the Licensee had failed to provide adequate protection for viewers from potentially harmful or offensive material which cannot be justified by the context in accordance with Rule 2.1 and 2.3.
- 1.6 Ofcom found the broadcast in breach of Rule 1.24, 2.1 and 2.3 of the Code.
- 1.7 Due to the serious and repeated nature of the breaches, the case was referred to the Committee for consideration of a statutory sanction.
- 1.8 After considering all the evidence and the Licensee's representations, both oral and written, the Committee decided that the breaches of the Code by *SportxxxBabes* were both sufficiently serious and repeated to be considered for a statutory sanction and to attract a financial penalty.
- 1.9 The Committee met on 21 July 2008. A representative of the Licensee attended the hearing to make oral representations.
- 1.10 Having regard to the serious and repeated nature of the breaches, and having regard to the Licensee's representations and Ofcom's Penalty Guidelines, the Committee decided it was appropriate and proportionate in the circumstances to impose a financial penalty on Satellite Entertainment Ltd Limited of **£20,000** (payable to HM Paymaster General).

## 2. Background

- 2.1 *SportxxxBabes* is a TV channel operated by SEL, situated in the 'adult' section of the Sky EPG. It shows live interactive programmes that feature

presenters (known as “babes”), who invite viewers to contact them using PRS.

- 2.2 On 19 June 2006, Ofcom wrote to broadcasters, including the Licensee, who transmitted ‘babe’-style programmes based upon PRS numbers to remind them of their obligations under the Code. This letter was written because of, among other things, Ofcom’s concerns about the degree of sexual content on the channels. On 8 September 2006, Ofcom wrote a second letter to the same licensees due to continued serious concerns about their compliance with the same sections of the Code. The letter reiterated and expanded on Ofcom’s June letter. It underlined that if a broadcaster was found in breach of the Code following the June and September letters, Ofcom would consider the imposition of a statutory sanction against the broadcaster.

### **3. Legal Framework**

#### **The Communications Act 2003**

- 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)); 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 findings;
- impose a financial penalty; and/or
- revoke a licence (not applicable to the BBC, S4C or Channel 4).

### **The Human Rights Act 1998**

- 3.5 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").
- 3.6 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).
- 3.7 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**

- 3.8 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.
- 3.9 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.

### **Remedial action and penalties**

- 3.10 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.
- 3.11 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.

- 3.12 Section 238 of the Act provides Ofcom with the power to revoke a TLCS licence.

### **Relevant provisions of the Ofcom Broadcasting Code**

- 3.13 Rule 1.24: "Premium subscription services and pay per view/night services may broadcast 'adult sex' material between 2200 and 0530 provided that... [in addition to other protections]... there is a mandatory PIN protection system, or its equivalent, in place so to restrict access solely to those authorised to view; and that there are measures in place to ensure the subscriber is an adult".
- 3.14 Rule 2.1: "Generally accepted standards must be 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 harmful and/or offensive material."
- 3.15 Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context."

### **4. Ofcom's investigation and SEL's responses**

- 4.1 Ofcom received three complaints about content broadcast on *SportxxxBabes* from 22:00 on 26 February 2007, 13 March 2007 and 17 March 2007. In each case, the complainants objected to the sexual explicitness of content on the Channel.
- 4.2 Ofcom viewed the material broadcast on these dates. It included scenes of apparent masturbation, the apparent insertion of dildos and apparent oral sex. At times the presenters were naked.
- 4.3 On each date the sexual activities shown were broadcast over a prolonged period and were accompanied by the following voiceover, which was transmitted intermittently: *"Our model on-screen is about to have a real live orgasm.....you can talk to her while 'tommy tanking' [i.e. rhyming slang for wanking] or just listen in on her call...you really don't want to miss this, we are live and it is real."*
- 4.4 Ofcom sought the Licensee's comments on the complaints under Rules 1.24 ('adult-sex' material), 2.1 (generally accepted standards) and 2.3 (material that may cause offence must be justified by context) of the Code. Ofcom also drew SEL's attention to Ofcom's previous letters of June and September 2006 which had been sent to the Licensee.
- 4.5 The Licensee defended its broadcasts on the grounds that: the programming complained of was not 'adult-sex' material and the content complied with generally applicable standards in the context in which it was broadcast, namely transmission after the 21:00 watershed on a channel situated in the 'adult' section of Sky's EPG. Although it denied that any of its late night content breached the Code, SEL voluntarily ceased to air, for the time being, any content comprising simulated sexual activity between a man and a woman. The Licensee also stated that this was the first time that it had received feedback from Ofcom concerning its 'freeview' content. The Licensee commented that it had, on a number of occasions, raised its

concerns about the lack of guidance available in connection with the appropriate degree of sexual content on 'adult' chat free-to-view channels.

## **5. Ofcom's decision that SEL was in breach of the Code**

- 5.1 Having carefully considered the representations made by SEL, Ofcom judged that the programming broadcast on 26 February 2007, 13 March 2007 and 17 March 2007 was in breach of the following Code rules:
- Rule 1.24 ('adult-sex' material not under encryption);
  - Rule 2.1 (generally accepted standards); and
  - Rule 2.3 (material which may cause offence must be justified by the context).
- 5.2 This decision that there was a breach of Rule 1.24 was based on the Executive's view that the content of the programme was sexually explicit, its primary purpose was to arouse the audience sexually, and it did have any or sufficient editorial justification. In the broadcast on 26 February 2007 a presenter appeared to perform oral sex on another presenter, who appeared to be naked. In addition one presenter, who was apparently naked, was shown from a side view masturbating and appeared to alternately insert the dildo into her vagina and her mouth. The genital regions of the presenters were pixellated. The broadcast on 13 March 2007 featured a naked male lying down while a semi-naked female appeared to perform oral sex and masturbate him (the male's genital area was pixellated). Another female could be seen, apparently masturbating and appeared to pull her knickers to one side and insert the dildo into her vagina. Later the couple were shown apparently having sex. On 17 March 2008 a female presenter, who was clearly naked, appeared to masturbate while a semi-naked female behind her appeared to insert a dildo into the first female's vagina. A third female, who was wearing knickers, was seen apparently masturbating (with her hand inside and outside her underwear). One presenter removed another's knickers and used them to gag her briefly, after which she appeared to insert a vibrator from behind into the second presenter. Some images were accompanied by the voiceover described in 4.3 above.
- 5.3 The decision that there were breaches of Rules 2.1 and 2.3 was based on the Executive's view that the material breached generally accepted standards and had the potential to cause offence, and that this offence was not sufficiently justified by the context in which the content was broadcast.

## **6. Referral to the Content Sanctions Committee**

- 6.1 Ofcom considered that, taking all the circumstances into account, the breaches of Rules 1.24, 2.1 and 2.3 were sufficiently serious to warrant the consideration of the imposition of a statutory sanction. This was because of the graphic nature of the material broadcast, the potential offence to viewers in general, and because transmission occurred after the Channel had been notified specifically of Ofcom's concerns about explicit material on 'babe' channels (see paragraph 2.2 above). The breaches were also repeated.

## **SEL's written representations on the recommendation to refer the breaches to the Committee**

- 6.2 The Licensee, through its solicitors, made a series of written submissions to Ofcom on the proposed decision to refer the breaches of the Code by SEL to the Committee. In summary the main points put forward by the Licensee to argue that the case did not warrant a sanction, or that if a sanction were to be imposed it should be minimal, were:
- regarding Rule 1.24, the meaning of, and guidance on, 'adult-sex' material were not clear and Ofcom was not justified in giving the meaning it had to 'adult-sex' material; as a result, at the time of the breaches, the Licensee did not know the material contravened the Code;
  - the sexual activities broadcast on the Channel were simulated only;
  - regarding Rules 2.1 and 2.3, the material complained of was justified by the context and was in line with generally accepted standards;
  - the material was broadcast on a channel in the 'adult' section of the EPG and after 22:00;
  - other 'babe' channels had broadcast material of similar explicitness;
  - it was inconsistent with previous Ofcom decisions to refer these breaches to the Committee for consideration of sanction;
  - the Licensee voluntarily moderated its content to some extent after being found in breach;
  - the Licensee had raised its concerns with, and asked for more guidance from, Ofcom (which was not provided), and had consistently sought to cooperate with Ofcom; and
  - Ofcom was not entitled to regard the breaches as repeated.

## **Decision to refer to the Committee**

- 6.3 Having taken account of all the representations made by SEL, the Ofcom Executive concluded that the breaches were repeated and sufficiently serious to refer the case to the Committee for the consideration of a statutory sanction.
- 6.4 The Committee, having viewed material relevant to the decision of the Ofcom Executive to refer the current breaches to the Committee, accepted that the present case was sufficiently serious and repeated to warrant referral and that it should be considered for sanction. Accordingly, SEL was invited to attend an oral hearing before the Committee.

## **7. Sanctions Hearing**

- 7.1 The Committee held a hearing to consider this case on 21 July 2008. At this meeting SEL made oral representations to the Committee before the Committee decided whether the breaches warranted the imposition of a statutory sanction, and if so, at what level. A representative of the Licensee attended the hearing to do so.

- 7.2 SEL stressed the significance an Ofcom sanctions process had for the company and the potential effects of a fine on the company's finances and staffing.
- 7.3 The Licensee explained that the TV channels are part of a larger 'adult'-oriented business with a presence in several media. The company is experienced and its staff is available to work with Ofcom to ensure compliance. SEL said that it takes compliance seriously. In the past, the Licensee said, the company had had a good working relationship with Ofcom in which the regulator took a pragmatic stance; the Channel would act on any advice given. To SEL the sanctions process was a major change in Ofcom's approach and was not necessary. Had Ofcom made known its view, the company would have complied with it. In the Licensee's opinion Ofcom had taken the opposite approach and seemed to want not to assist the Licensee.
- 7.4 The Licensee told the Committee that it believed that it was complying with the requirements of Ofcom's notifications (letters of June and September 2006) to the industry. The material in question had been shown well after 9pm. The Licensee asserted that the material before the Committee started at 22.00, 22.45 and 23.40 and each therefore was comfortably after the 21.00 watershed and, SEL believed, in line with the letters' guidance.
- 7.5 SEL takes the issue of harm and offence seriously and would not wish to be party to anything that would cause harm. The company liaises with the police and Trading Standards to ensure compliance for 'adult' print works. The company also supplies high-profile hotel chains with in-room film content. The Licensee further said that the company is sensitive to moral considerations and takes the question of harm seriously.
- 7.6 As to context, SEL said that the Channel is located in the 'adult' sector of Sky's EPG (therefore not in General Entertainment), a part of the EPG that can be PIN protected by parents.
- 7.7 The Licensee asserted that programming that can be found in general entertainment programming has a greater capacity to cause harm than does SportxxxBabe's output. Certain Hollywood productions and 'documentaries' about the 'adult' industry, for example, contain material stronger and more likely to cause harm than does its service.
- 7.8 The Committee asked the Channel whether they had sought guidance from Ofcom after the June and September 2006 letters had been sent to 'babe' channels. In reply, SEL said it had sought advice from its Ofcom contact but that the Channel's understanding is that the "general flavour" of the programming is what matters, and that specifics were not pursued with Ofcom. The Licensee said that the Ofcom member of staff had not actively said that the Channel's output was acceptable, but that no issues had been highlighted. Moreover, the Licensee said that the Channel had been transmitting material of this standard for a long time: "night after night, year after year".
- 7.9 The Committee put to the Licensee that the regulatory system for broadcasting places responsibility for compliance on licensees and that Ofcom had through its Code, Code Guidance and specific letters on the subject provided plenty of guidance to those operating in this sector. SEL



understood that the regulator could not state specifically what could/could not be shown but that as a broadcaster it had to interpret elements of the Code.

- 7.10 The Committee questioned the Licensee about the meaning of “nudity”. SEL said it was the Licensee’s practice that the performers always wore underwear; and because the performers wear two pairs of knickers they could not be nude when it appeared they were in the programmes complained of. In that respect the Licensee said it could not explain the inconsistency between this practice and the admission by the Licensee’s solicitors (in correspondence) that a female presenter had in fact been naked at one point in one of the programmes.
- 7.11 In response to questioning by the Committee about the Channel’s position in the EPG, the Licensee considered some programming in the general entertainment section to be more explicit than that in the ‘adult’ section. The Committee also drew the Licensee’s attention to the repeated audio loop described in paragraph 4.3 above. The Licensee said this material was acceptable because viewers would be aware that the depicted sexual activities were not real - viewers suspended their sense of reality.
- 7.12 In answer to questioning about whether the purpose of the output of SportsxxxBabes was fundamentally sexual arousal, SEL said that it considered the content that was the subject of the sanction to be legitimate editorial material and that the broadcasts were not exclusively made up of erotic elements.

## **8. Decision by the Committee**

- 8.1 The Committee considered carefully the serious and repeated nature of the Licensee’s breaches of the Code together with all the written and oral submissions provided by the broadcaster. For the reasons set out below, the Committee decided that it was appropriate in all circumstances of the case to impose a financial penalty on the Licensee. In deciding on the level of financial penalty the Committee had regard to Ofcom’s Penalty Guidelines.<sup>1</sup>

### **The seriousness of the breaches**

- 8.2 Having viewed the material, and taken account of all the evidence and the representations of the Licensee, the Committee considered that the breaches of Code Rules 1.24, 2.1 and 2.3 were serious. This was for the following reasons.
- 8.3 First the nature of the content. There was in the view of the Committee a high level of sexual explicitness – particularly in the imagery (detailed in paragraph 5.2 above) – in the material broadcast. In particular there was apparent sexual intercourse, apparent penetration with dildos and vibrators, apparent masturbation, and also the gagging of a woman with her knickers. Whether these activities were “real” or simulated did not alter the seriousness of the breaches in the opinion of the Committee. They did not obviously appear simulated, and were intended to be perceived as “real” to

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<sup>1</sup> 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.

the ordinary viewer. The Committee considered the primary purpose of the broadcasts to be sexual arousal or stimulation as seemed clear from the voiceover quoted in paragraph 4.3 above. In the Committee's opinion, a reasonable person would regard this material as inappropriate to be broadcast unencrypted.

- 8.4 Second, the Committee was concerned about the significant harm and offence caused to viewers in general and in particular to children. It was important to protect those who may come across this free-to-air content unawares.
- 8.5 The Committee noted the Licensee's arguments, made both in correspondence and orally at the Hearing. However, the Committee concluded that, despite these arguments, including the contextual argument made in respect of the Channel's location in the 'adult' section of the EPG, the highly graphic nature of the material broadcast on several occasions did amount to serious breaches of the Code. The fact that a channel is placed in the 'adult' section of the EPG does not permit that service to broadcast 'adult-sex' material or other explicit sexual imagery free-to-air which breaches the Code. Nor does it provide a sufficient editorial or other justification for doing so.
- 8.6 The Committee was mindful of SEL's oral submission that material of a similar standard had been commonplace on the Channel for a long time before Ofcom raised an investigation. However the Committee considered the seriousness of the breaches was compounded by the fact that they occurred following Ofcom's warning letters of 19 June 2006 and 8 September 2006, which were sent to all 'babe' channels, including the Licensee, explaining Ofcom's concerns about the explicitness of material being transmitted by 'babe' channels at that time. The second of these letters (September 2006) specifically warned licensees that breach of the Code in this respect could result in the consideration of a statutory sanction.

### **Repeated breaches**

- 8.7 Breaches of Rules 1.24, 2.1 and 2.3 were recorded against the Licensee by Ofcom concerning material broadcast on SportxxxBabes on three separate occasions in February and March 2007. The Licensee had therefore also repeatedly breached the Code on these dates.
- 8.8 In light of all the circumstances, the Committee found that the breaches demonstrated a serious and repeated failure by the Licensee to ensure compliance with the Code.

### **Precedent**

- 8.8 The Committee noted the representations made by the Licensee that it was not appropriate to impose a sanction on SEL in respect of the Channel because either: (a) the present case was no more serious than others which were not referred by Ofcom to the Committee for consideration of a statutory sanction; or (b) was less serious than a comparable case involving 'babe'-style' material which was referred to the Committee. As regards (a) the Licensee referred to various cases including a published Finding of a breach of the Code – but not a sanction – against a programme called *The Extreme Truth*, broadcast on Men & Motors. As regards (b), SEL referred to the

*Babeworld* sanctions case, when 'babe' programming in breach of the Code resulted in a fine of £25,000 imposed by the Committee on 30 November 2007.

- 8.9 The Committee viewed material relating to the other cases highlighted by the Licensee which were not referred by the Ofcom Executive to the Committee for consideration of a sanction. It took account of all the circumstances and context surrounding these cases and the representations made by SEL. In the Committee's opinion, compared to those cases, the breaches in the present case are more serious and warrant sanction for the reasons set out in this adjudication. As regards for example *The Extreme Truth*, there were various objective reasons why it was not appropriate for this case to be referred to the Committee for consideration of a sanction. These included: the fact that *The Extreme Truth* was a different type of programme from that in the current case; that the licensee in that case had not been specifically warned in advance about showing such content; and other points of mitigation not found in the case of the Licensee.
- 8.10 As regards the comparison with *Babeworld*<sup>2</sup>, the Committee decided that the present case merited the imposition of a sanction as had the earlier one. Both cases concerned unencrypted 'adult chat' PRS channels featuring explicit sexual activity such as female masturbation after the 21.00 watershed, and repeated breaches of the Code. Further, the Committee considered the visual content shown by *SportxxxBabes* materially stronger than that in the *Babeworld* case.
- 8.11 The Committee also considered the precedent sanctions of a £17,500 financial penalty imposed on *Smile TV*<sup>3</sup> and £25,000 imposed on *Television X*<sup>4</sup>. Compared to *Smile TV*, the visual imagery in the present case was stronger (apparently showing intercourse, oral-genital contact, masturbation, the use of dildos, a woman gagged with her knickers, and full nudity); and of much greater duration and shown on several occasions. The sanction applied to *Television X* concerned breaches of the Code as regards both unencrypted and encrypted transmissions showing more explicit anatomical detail.
- 8.12 In the Committee's opinion, referral of this case to the Committee, and the imposition of a financial penalty, was appropriate and not inconsistent with the other cases.

### **Deterrent**

- 8.13 In deciding on the appropriate size of a financial penalty in this case, the Committee considered it should be sufficiently significant to act as a deterrent against a repeat of these or similar breaches.
- 8.14 The Committee was concerned that Licensees, especially those who choose to operate in the 'adult' market, should understand that breaches of the Code of a serious nature can have the most significant repercussions. The Committee considered a financial penalty to be merited in this case, even though these were the Licensee's first recorded breaches of the Code. The

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<sup>2</sup> [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/babeworld.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/babeworld.pdf), 30 November 2007

<sup>3</sup> [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/SmileTV.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/SmileTV.pdf), 10 July 2008

<sup>4</sup> [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/portland.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/portland.pdf), 23 July 2008

Committee also notes that *SportxxxBabes* is what is known as a 'babe' channel. Its income is derived from the PRS revenue generated by viewers who call in for 'adult' chat or text the numbers shown on-screen. It is not funded by subscription, sponsorship income or advertising revenue. The Committee considers there to be a direct link between the nature of content on PRS-driven free-to-air 'adult' channels and the revenue attracted – the more explicit the material the more likely it is in a competitive market between 'babe' services that a channel showing more explicit material will attract more callers and texts. This is a material factor in the consideration of sanctions in such cases.

### **Factors tending to increase the level of penalty**

- 8.15 The Committee then considered whether there were any factors which aggravated or tended to increase the level of any financial penalty it might impose. It noted that:
- the Licensee had been reluctant to accept that it had breached the Code; and
  - the breaches occurred following Ofcom letters of June and September 2006, copies of which were sent to the Licensee, warning it against broadcasting explicit sexual content.

### **Mitigating Factors**

- 8.16 The Committee then considered whether there were any factors which in its view might limit or decrease the level of financial penalty. It noted all the submissions made by the Licensee. In particular the Committee took account of the following:
- the Licensee had taken some steps to improve compliance after notification by Ofcom that the regulator believed it to have seriously and repeatedly breached the Code; and
  - no previous breaches of the Code had been recorded against the Licensee.

### **Conclusion**

- 8.17 The unencrypted broadcast of content showing presenters engaging in explicit sexual activity without strong and sufficient editorial justification for the inclusion of such images, is totally unacceptable. It has the potential to cause offence to viewers and harm to minors.
- 8.18 The Committee notes that it has recently imposed statutory sanctions against other 'babe' channels for explicit content. Mindful of those cases, 'babe' channels and 'adult' channels generally should be in no doubt of Ofcom's concerns about the need for robust compliance in this area. Should such cases be referred to the Committee in future, the Committee will continue to regard them very seriously.

- 8.19 The Committee wishes to make clear that if highly explicit sexual material is broadcast without editorial justification on a free-to-air channel on a single occasion it can be a very serious breach of the Code. The Committee underlines that the financial penalty imposed in this case would have been higher but for mitigating factors.
- 8.20 Having considered the relevant facts as outlined above and all the representations made by, the Committee decided to impose a financial penalty on the Licensee of **£20,000** (payable to HM Paymaster General) which it considered to be a proportionate and appropriate penalty in all the circumstances.

### **Content Sanctions Committee**

Philip Graf  
Kath Worrall  
Joyce Taylor

26 August 2008