

# Ofcom Content Sanctions Committee

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

## **Consideration of sanction against:**

Connection Makers Ltd (“the Licensee” or “Connection Makers”) in respect of its service Babeworld TV (“*Babeworld*” or “the Channel”) TLCS 628;

## **For:**

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

Rule 1.2: “In the provision of services, broadcasters must take all reasonable steps to protect people under eighteen;”

Rule 1.3: “Children must also be protected by appropriate scheduling from material that is unsuitable for them;”

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 the other protections named above:

- 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;”

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context;”

Rule 10.2: "Broadcasters must ensure that the advertising and programme elements of a service are kept separate;" and

Rule 10.3: "Products and services must not be promoted in programmes,"

in *Babeworld*;

**On:** 12 February 2007

**Decision:** To impose a financial penalty (payable to HM Paymaster General) of **£25,000**.

## 1. Summary

- 1.1. For the reasons set out in full in the Decision, 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 Connection Makers. This is in light of the serious and repeated nature of the Licensee's failure to ensure compliance with the Code in its service *Babeworld*.
- 1.2. *Babeworld* is a free-to-air TV channel operated by Connection Makers Ltd. It broadcasts without encryption in the 'adult' section of the Sky Electronic Programme Guide ("EPG"). It shows mainly live programmes using female presenters (described as "babes"), who invite viewers to contact them using premium rate services ("PRS"). Connection Makers is a member of the Eckoh Technologies PLC ("Eckoh Technologies") group of companies.
- 1.3. Ofcom received a complaint about the explicit sexual nature of the content shown on *Babeworld* on 12 February 2007 about 15 minutes after the 21.00 watershed. The viewer was concerned to find her son and his friends watching the programme.
- 1.4. The presenters were dressed provocatively in underwear and behaved in an extremely sexual manner, for example thrusting their breasts and buttocks directly at the camera and appearing to masturbate. They encouraged viewers to call them using explicit sexual language, for example: "*I want you to spunk in my mouth. It makes me really horny*"; "*she needs a nice hard cock up there*"; and "*...maybe you just want to bend me over and stick it up my arse*". Separately, Ofcom noted that, on the same date at 20.55, following a programme entitled *The Chat Lounge*, there was a prolonged promotion of a PRS number.
- 1.5. Ofcom concluded that the explicit sexual content on the programme, both language and visuals, was in breach of the Code Rules aimed at protecting the under 18s. The content was so explicit, and in particular the language, it was considered to be 'adult-sex' material. This meant it should have been broadcast under encryption. Given that the material appeared on a free-to-air unencrypted channel soon after the watershed, the Licensee also breached Rules 1.2 and 1.3 of the Code by failing to schedule the material appropriately

to provide adequate protection for under 18s, and breached the Rules requiring broadcasters to protect viewers in general from offensive material.<sup>1</sup>

- 1.6. The Code only permits a broadcaster to promote a PRS number if it forms part of the editorial content of the programme or is programme-related material<sup>2</sup>. In this case the promotion of the PRS number inviting viewers to contact 'off-screen girls' could not be justified by Connection Makers and so was in breach of Rules 10.2 and 10.3.
- 1.7. Ofcom took account of all the points point forward by the Licensee in its defence. These included that:
  - viewers of the sexually explicit material on the Channel were sufficiently protected by the fact that it was broadcast after the watershed in the 'adult' section of the EPG;
  - as regards the PRS promotion, the PRS number contributed to editorial content; and
  - in mitigation, the Licensee had taken action after the incidents on 12 February 2007 to improve compliance, by for example re-training the producer in charge that night.
- 1.8. In deciding to impose a financial penalty in this case, the Committee took into account that the Licensee had a record of poor compliance and that some of the breaches were repeated. It noted for example that:
  - in June and September 2006, Ofcom had written to the Licensee (amongst others) reminding it of its obligations under the Code to restrict the degree of sexual content on the channel and to separate advertising from programme content;
  - despite these warnings, the Licensee repeatedly breached the Code in August and September 2006 by promoting a '0909' (adult sexual service) PRS number before the watershed on an unencrypted channel; these breaches were primarily in Ofcom's view a matter of protecting the under 18s, as well as breaches of the requirements not to broadcast offensive material or promote a PRS number in programme time without adequate editorial justification; and
  - in November 2006, the PRS regulator PhonepayPlus (then known as ICSTIS) fined Eckoh Technologies £10,000 for the promotion of an adult service with an incorrect prefix on *Babeworld* on 5 September 2006.
- 1.9. Ofcom also had regard to the seriousness of the breaches. They were serious in particular because of:
  - the high level of sexual explicitness – both in imagery and language - in the material broadcast, one of whose primary purposes was sexual arousal or stimulation;
  - the material was 'adult-sex' material shown very soon after the watershed on a free-to-air and unencrypted channel. Ofcom wishes to make clear that such content is unacceptable, especially so soon after the watershed between 21.00 and 22.00; and
  - the February 2007 breaches occurred following Ofcom's letters of June and September 2006, which warned *Babeworld* against broadcasting explicit sexual content.

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<sup>1</sup> Rules 2.1 and 2.3 of the Code

<sup>2</sup> Rules 10.2, 10.3 and 10.9

- 1.10. Babeworld had repeated a number of breaches, especially of those Code Rules aimed at protecting the under 18s. Ofcom therefore considered this case to be serious. Ofcom was concerned to note that despite recording breaches of the Code for the promotion of an adult sex telephone line pre-watershed, the Licensee was, only a matter of months later, transmitting extremely explicit material (and in particular language) just after the watershed in clear breach of the Code.
- 1.11. For the avoidance of doubt, broadcasters operating in the adult section of the EPG should be clear that compliance with requirements of the Code applicable to this area, as clarified and explained in decisions of Ofcom, is mandatory. Should such cases be referred to the Ofcom's Content Sanctions Committee in future, it will regard them very seriously.
- 1.12. 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 a financial penalty on Connection Makers Ltd of **£25,000** (payable to HM Paymaster General).

## 2. Background

- 2.1. *Babeworld* TV is a free-to-air television channel operated by Connection Makers. It broadcasts without encryption and appears in the 'adult' section of the Sky EPG. It transmits mainly live programmes using female presenters (described as "babes"), who invite viewers to contact them using PRS telephone numbers. Connection Makers is a member of the Eckoh Technologies group of companies.
- 2.2. On 19 June 2006, Ofcom wrote to broadcasters which transmitted 'babe'-style programmes based upon PRS numbers, including the Licensee, to remind them of their obligations under the Code. This letter was written because of two primary concerns:
  - the degree of sexual content on the channels; and
  - the failure to ensure separation of advertising from programme content.
- 2.3. 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 letter in June. It also re-stated that the promotion adult chat lines pre-watershed was not compatible with the requirements of the Code. It underlined that if a broadcaster were found in breach of the Code following the June and September letters, Ofcom would consider the imposition of a statutory sanction against the broadcaster.
- 2.4. The Licensee responded by stating that it took regulatory compliance very seriously.
- 2.5. On 8 and 12 August and 15 September 2006, however, the Licensee promoted a '0909' (adult sexual service) PRS number before the 21.00 watershed. Ofcom started investigating these promotions on 15 September

2006 in relation to potential breaches of the Code, specifically Sections One: Protecting of the under Eighteens, Two: Harm and Offence, and Ten: Commercial References. The Licensee's explanation was that an intermittent technical fault had caused these services to be promoted.

- 2.6. In November 2006, PhonepayPlus (then known as ICSTIS), the PRS regulator, fined Eckoh Technologies £10,000 for the promotion of an adult service with an incorrect pre-fix (0906) on *Babeworld* on 5 September 2006<sup>3</sup>.
- 2.7. Ofcom concluded that the promotion of PRS of an adult nature before the watershed throughout August and September 2006 was in breach of the Code, as was the promotion of services that did not contribute to the editorial content. Ofcom therefore recorded breaches of Rules 1.2 (protection of under 18s), 1.3 (appropriate scheduling for children), 2.1 (generally accepted standards), 2.3 (material which may cause offence must be justified by the context), and 10.9 (PRS numbers must not appear in programmes except where they form part of editorial content or they are programme-related material) for the broadcasts in August and September 2006. These breaches were recorded on 15 May 2007, when the Licensee was advised that this outcome demonstrated repeated Code breaches. Ofcom noted the Licensee changed its daytime format and did not repeat these breaches.
- 2.8. Separately, in February 2007, Ofcom received a complaint about the explicit sexual nature of the content shown by the Licensee soon after the watershed. The viewer was concerned to find her son and his friends, at around 21:15, watching a provocatively dressed presenter making highly sexual remarks such as *"I want you to spunk in my mouth. It makes me really horny"*. The complainant was also concerned that the young people watching had repeatedly called the number promoted.
- 2.9. When assessing the programme, Ofcom noted that the presenters on screen soon after the watershed were dressed provocatively in underwear. They encouraged viewers to call them by using extremely explicit sexual language, such as *"Mimi's pussy needs some attention"*, *"she needs a nice hard cock up there"*, *"the dirtiest sex chat you've ever had"*, *"for the most explicit hard phone sex around"*, *"...or maybe you just want to bend me over and stick it up my arse"*. The dialogue was accompanied by the presenters behaving in an extremely sexual manner, e.g. thrusting their breasts and buttocks directly at the camera and appearing to masturbate. At 21:59 one of the presenters asked viewers to *"send in your pictures, show us your nice hard cock"*. At just past 22:00, the presenters removed their tops and continued to act in a sexually explicit manner.
- 2.10. Separately, Ofcom also noted that following a programme entitled *The Chat Lounge*, broadcast on the same date, there was a prolonged promotion of a PRS between 20:55-21:00. The promotion invited viewers to call an off-screen chat service and consisted of still images only, and a PRS number.

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<sup>3</sup> Decision of ICSTIS Adjudication Panel against Eckoh Technologies dated 9 November 2006: <http://www.icstis.org.uk/consumers/adjudications/default.asp?id=584&node=>

### 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)); and, the international obligations of the United Kingdom are complied with (section 319(2)(i))<sup>4</sup>.
- 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 (or in certain cases shorten) the licence.

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<sup>4</sup> In this case the relevant international obligations are with respect to advertising included in television services contained in the Television Without Frontiers Directive (89/552/EEC as amended by 97/36/EC). These duties require that advertising and programming to be kept separate.

## **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**

- 3.12. Rule 1.2: “In the provision of services, broadcasters must take all reasonable steps to protect people under eighteen.”
- 3.13. Rule 1.3: “Children must also be protected by appropriate scheduling from material that is unsuitable for them.”
- 3.14. Rule 1.14: “The most offensive language must not be broadcast before the watershed or when children are particularly likely to be listening.”

- 3.15. Rule 1.24: "Premium subscription services and pay per view/night services may broadcast 'adult sex' material between 2200 and 0530 provided...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".
- 3.16. 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."
- 3.17. Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context."
- 3.18. Rule 10.2: "Broadcasters must ensure that the advertising and programme elements of a service are kept separate."
- 3.19. Rule 10.3: "Products and services must not be promoted in programmes..."

#### 4. Ofcom's investigation

- 4.1. Ofcom carried out an investigation of programming on *Babeworld* immediately before, and the period after, 21.00 on 12 February 2007 following a complaint that offensive and explicit sexual content (both visual and language) was broadcast. In light of the evidence, and the Licensee's representations, Ofcom concluded that this programming was in breach of the Code.

#### Ofcom's investigation of February 2007 complaint

- 4.2. Ofcom noted that at 20:55, after a programme entitled *The Chat Lounge*, there was an on-screen message which stated "*The Chat Lounge will return at 10am. Call 09069 62 69 62 to speak to our off screen girls.*" The promotion was not included in the context of *The Chat Lounge*, but after it. Ofcom therefore had concerns as to whether there was adequate editorial justification for promoting this service.
- 4.3. Immediately after the 21:00 watershed that same day a programme entitled *Babeworld* began. The programme was presented by three women dressed provocatively in low cut bras, stockings and knickers. The presenters encouraged viewers to call them and frequently used sexually explicit language e.g. "*you are going to be spunking your load*", "*Mimi's pussy needs some attention*", "*she needs a nice hard cock up there*", "*the dirtiest sex chat you have ever had*", "*for the most explicit hard phone sex around*", "*your cock could virtually be straight in between my tits right now*", "*...or maybe you just want to bend me over and stick it up my arse.*" The dialogue was accompanied by the presenters behaving in an extremely sexual manner e.g. thrusting their breasts and buttocks directly at the camera, running their hands across their breasts, bodies and genital areas and appearing to masturbate. At 21:59 one of the presenters asked viewers to "*send in your pictures, show us your nice hard cock*". At just past 22:00, the presenters removed their tops and continued to act in a sexually explicit manner.



- 4.10. Ofcom asked Connection Makers to comment on this output in relation Sections One (protection of the under eighteens) and Two (generally accepted standards) of the Code. Additionally, it asked the Licensee to comment on how the use of PRS at 20:55 complied with Section Ten of the Code.

#### **Connection Makers' response to Ofcom's investigation**

- 4.11. Connection Makers stated that, on 6 March 2007 prior to being notified by Ofcom of any complaint about the content on 12 February 2007, it had dismissed the presenter who had made the remarks objected to. This had taken place after routine compliance procedures had discovered a number of transgressions of its internal code of conduct, including on the night in question. Additionally, the Licensee said the producer in charge that night was fined substantially, made to complete the compliance training course again and had his shifts monitored by a full-time compliance officer.

- 4.12. Connection Makers replied to the concerns raised by Ofcom regarding compliance with the Code as follows:

- Rule 1.2 – the broadcast contained text and verbal on-screen messages that the programming was for over 18s only. In addition, callers were reminded that the content was suitable for over 18s only.
- Rule 1.3 – *Babeworld* was scheduled after the 21:00 watershed, therefore the likely expectations of the audience was 'well set'. The Licensee believed the scheduling was appropriate.
- Rule 1.24 – Connection Makers did not believe the material broadcast was equivalent to 'adult-sex' material and therefore this Rule did not apply. It said it monitored its content in relation to other content which is available to ensure there was a significant difference between what it showed and material that would require PIN protection.
- Rule 2.1 – the Licensee said generally accepted standards were the standards it most had issues with when trying to train staff. It said appropriate guidance was the best guide to show them what the acceptable limits to content were, and made reference to Ofcom's letters from 2006 noting what is not acceptable. As this complaint was the only one received about this content, it believed its compliance procedures were generally working and the action taken prior to the complaint being received indicated their commitment to compliance.
- Rule 2.3 – the Licensee believed that *Babeworld* was situated in the adult section of the EPG and clearly signposted as suitable for over 18s and therefore the contextual nature of the service was not really an issue.

- 4.13. Connection Makers did not address Rules 10.2 and 10.3.

#### **5. Ofcom's findings on the breaches**

- 5.1. Ofcom took the responses from Connection Makers into account and on 15 May 2007, it recorded the following breaches in relation to material broadcast on 12 February 2007:

- Rule 1.2 (protecting the under eighteens);
  - Rule 1.3 (children must be protected by appropriate scheduling);
  - Rule 1.14 (use of the most offensive language before the watershed);
  - Rule 1.24 ('adult-sex' material not under encryption);
  - Rule 2.1 (generally accepted standards);
  - Rule 2.3 (material which may cause offence must be justified by the context);
  - Rule 10.2 (separation of programming and advertising); and
  - Rule 10.3 (products and services must not be promoted within programmes).
- 5.2. Specifically, Ofcom decided that it considered the behaviour and clothing of the presenters was overtly sexual and the editorial basis for the programming appeared to be the sexual gratification of viewers. Although recognising that *Babeworld* TV was situated in the adult section of Sky's EPG, Ofcom noted that it was available to all Sky customers to view freely. Although the positioning of a channel on the EPG provided viewers with an indication of the type of material broadcast, the broadcaster had failed to apply generally accepted standards to this material which was transmitted on a free-to-air channel. Ofcom also advised that not all under eighteens stop viewing at 21:00 and informed the Licensee that Rules 1.2 and 1.3 of the Code may continue to apply in programmes broadcast after this time, particularly with respect to material so close to the watershed.
- 5.3. Regarding the acceptability of the broadcast under Rule 1.24, the Code restricts the transmission of 'adult-sex' material to premium subscription services and pay per view/night services that have specific protection measures in place. Ofcom's published guidance on this Rule states that "*in judging what material is adult sex material and therefore is subject to this rule, broadcasters should be guided by the definitions used by the BBFC when referring to 18-rated films and "sex-works at 18"*". The BBFC defines sex-works at 18 as "*works...whose primary purpose is sexual arousal or stimulation*". Ofcom judged that the material and, in this case particularly, the language (which was equivalent to an adult telephone sex-line) broadcast on 12 February 2007 was sexually explicit and its primary purpose was sexual arousal. As such, the content was suitable only for broadcast with appropriate protection mechanisms in place such as encryption and PIN protection.
- 5.4. Ofcom noted that the Licensee failed to address the promotion of PRS at 20:55 on 12 February 2007 that did not appear to contribute to editorial content. There was a prolonged promotion of a PRS number inviting viewers to call an off-screen chat service after *The Chat Lounge* had concluded, and the Licensee did not provide any evidence that the promotion either formed part of the editorial content of *The Chat Lounge* or any other programme, or that it was programme-related material. Ofcom's concerns about the validity of the PRS number was compounded by the fact that the Licensee promoted it as "the cheapest daytime chat in the UK". This was further evidence that its promotion was commercial in nature and not genuine programme-related material or forming part of the editorial of programme. Ofcom therefore recorded breaches of Rules 10.2 and 10.3 for breaches of the Code concerning the material broadcast around 20.55 on 12 February 2007. Ofcom reminded the Licensee that Ofcom had previously made clear in its letter of 8 September 2006 that under the Code it is prohibited to "*keep the PRS number on screen without any visuals in terms of stills or videos...*" Further, Ofcom had previously recorded a breach of Rule 10.9 for the promotion of

PRS that did not contribute to editorial content in relation to programmes broadcast on the Channel in August and September 2006. The broadcaster in February 2007 contravened the Code in the same way as it had done in August and September 2006 (ie by promoting a PRS number without adequate justification) and therefore appeared to have repeatedly breached the Code.

- 5.5. Ofcom reminded the Licensee of its letter to all 'babe' broadcasters in the adult sector, dated September 2006, which stated:

*"...where a breach is upheld following due process we will consider whether in the light of notice given in [our] last letter, the actions of the broadcaster in including such content in the service amount to a repeated, deliberate or serious breach of the Code. We would in such a case consider imposing a statutory sanction..."*

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

- 6.1. Ofcom considered that, taking all the circumstances into account, and in particular the seriousness of the breaches and potential harm to viewers under the age of 18 and the repeated nature of the breaches, the breaches of Rules 1.2, 1.3, 1.24, 2.1, 2.3, 10.2 and 10.3 were sufficiently serious to warrant the consideration of the imposition of a statutory sanction.
- 6.2. Ofcom therefore referred the case to its Content Sanctions Committee ("the Committee") for the consideration of a statutory sanction. Accordingly, Connection Makers was invited to attend an oral hearing before the Committee and was given the opportunity to make written representations in advance of attending, as well as at the hearing itself. A summary of these written representations is set out below in Section 7.

## **7. Connection Makers' written representations on the imposition of a sanction**

- 7.1. In two separate submissions to Ofcom, the Licensee disputed that the primary purpose of the programme was sexual gratification. Connection Makers said its primary purpose was to allow viewers to give their opinions on subjects of their choice and interact with the show; and the overall tone of the programme was flirtatious and the language "saucy". This would encouraged viewers to call in on any subject they chose. It stated that a large percentage of its viewers had "mundane" or "bland" conversations with the presenters.
- 7.2. The Licensee asserted that there was no actual guidance given by the Code as to what is or is not appropriate in 'babe-style' channels. It went on to state that while the Ofcom guidance refers to the definition used by the BBFC, these definitions were so limited as to be in effect unusable. It also did not believe the content of material broadcast was equivalent to 'adult-sex' material and said that the two previous Ofcom sanctions adjudications against XplicitXXX and Look4Love referred to as possible precedents by Ofcom involved language and behaviour that was considerably stronger than the present case. The Licensee argued that the material it transmitted was justified by the context in which it was broadcast, for example by its position in the adult section of the EPG. In addition a Sky subscriber could use PIN protect access to channels so that children could not access them. It noted that the content of *Babeworld* TV was not materially different from that broadcast free to air by comparable channels.

- 7.4. With regard to Rules 10.2 and 10.3, the Licensee asserted that calls to the number promoted at the end of *The Chat Lounge* contributed to the programme at a later date. It considered this service was “an extension to the show” and “could not be construed as advertising” because calls made during this period could still contribute to a later show. However, it noted that at Ofcom’s request it had removed this page for the duration of the investigation.

## 8. Sanctions Hearing

- 8.1. Ofcom’s Content Sanctions Committee held an oral hearing on 25 October 2007. At this meeting Connection Makers 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 by Marcus King, Managing Director of Connection Makers, and Alistair Wilson, Legal Adviser.
- 8.2. Connection Makers underlined the importance it placed on complying with the rules of industry regulators. As a largely telephony-oriented company it had been used to working with PhonepayPlus (formerly known as ICSTIS) for over 10 years.
- 8.3. Marcus King stated that when he became Managing Director of the Channel in April 2006, the independent production company which produced *Babeworld* was replaced. This was because Connection Makers believed the output was “too risqué” and it was deemed important to maintain the channel’s “good name”. The Licensee argued its commitment to compliance was demonstrated by its ongoing contact with the current independent production company. There were weekly meetings held between the two parties, calls to the programme were monitored and the previous day’s transmission was reviewed to ensure the content was acceptable.
- 8.4. On the complaint to Ofcom, the Licensee said there was reason to doubt its veracity. The phone service referred to in the complainant’s letter was not the one offered by *Babeworld*; the Channel had never offered a service for viewers to buy pictures of its presenters, contrary to the complainant’s allegation; and its call data showed no evidence of multiple calls being made from the area where the complainant lived. The Licensee suggested the complainant may have been watching a different channel to *Babeworld*.
- 8.5. Connection Makers said that in response to the letters from Ofcom in June and September 2006, it had many meetings with programme producers to discuss compliance issues. The Licensee was satisfied its pre-watershed output was compliant and, post-watershed, it reviewed its on-screen graphics to ensure there was no confusion about the adult nature of the content. It also stressed that the Channel did not broadcast output which included PRS promoting photographs of the presenters to viewers, nor did it include PRS for other similar promotions. The Licensee noted that, after reviewing its output in early 2007, Ofcom recognised that compliance on the daytime output of *Babeworld* had improved.
- 8.6. Connection Makers said it operated in the ‘adult’ broadcast area where, it claimed, no detailed guidance exists as to what is or is not acceptable. As *Babeworld* is broadcast ‘live’, this created challenges for compliance since the

'generally accepted standards' to which Ofcom's Code refers are open to interpretation.

- 8.7. To ensure compliance, the Licensee said it compared its output to that of other channels in the adult sector and to channels where Connection Makers considered the content similar in sexual content or language to *Babeworld*. In this way, the Licensee believed that it had taken account of the context for the Channel's output and general audience expectations. Connection Makers stressed that in all correspondence with Ofcom, it has looked for guidance and help to ensure it remained compliant.
- 8.8. With regard to its compliance record, Connection Makers argued that the previous two breaches in August and September 2006 were inadvertent and not related to explicit visual content or language on the programme (they were about a holding page which contained a PRS number). After these breaches, and the ones relating to daytime content (which were not pursued by Ofcom because of the Channel's improved compliance) occurred, the Licensee said it spent "many hours" with the production company to ensure it improved its compliance.
- 8.9. Connection Makers disagreed with the Ofcom's view that it was "negligent" as to *Babeworld's* compliance with the Code. The Channel for example had introduced internal compliance guidelines for presenters in April 2006. It pointed out that the presenters who appeared in the programme have to sign a declaration form to confirm they have been trained in compliance before they are allowed to appear on camera. In this specific case, the on-screen presenter whose conduct caused the complaint to Ofcom was dismissed by the Licensee before it had been notified of the complaint by Ofcom; and the producer involved removed from the programme and re-trained.
- 8.10. Connection Makers made a number of points in mitigation. These included that: it had cooperated fully with Ofcom during its investigation; it had in its view a satisfactory compliance record and took swift action against the presenter after 12 February 2007; and, because only one complaint had been received this suggested the content was within generally accepted standards.
- 8.11. Connection Makers argued that its case was not comparable to earlier sanctions cases. In the case of *XplicitXXX* a fine of £50,000 was imposed but the material was much more sexually explicit. Similarly, the facts in the case of *Look4Love*, where a £175,000 penalty was imposed, were very different.
- 8.12. The Licensee referred to two findings against 'babe' channels, *LivexxBabes* and *Star Bazaar*, published in Ofcom Broadcast Bulletin 95 on 22 October 2007. In its opinion whilst the broadcast material found in breach was similar to that in the present case, Connection Makers noted that these breaches were not referred to the Committee for consideration of a sanction. The Licensee asked that the Committee had regard to these two findings and adopt a consistent approach in taking its decision.
- 8.13. The Committee queried how seriously *Babeworld's* internal compliance guidelines for presenters were enforced and why they did not contain any reference to the Code. Connection Makers said that the presenters were taken through the guidelines well in advance of going on air, and that the guidelines attempted to distil the Code into language and practical guidelines which the presenters could understand.

- 8.14. The Licensee acknowledged in reply to a query from the Committee that the number of complaints made to Ofcom – and the fact that in this case there was not higher number of complaints - is not relevant as to whether or not there is a breach of the Code.
- 8.15. The Licensee confirmed there was a trained producer in the studio at the time the remarks complained of were made by the presenter on 12 February 2007. The Licensee, however, could not explain why the producer did not pick up on the very explicit language at the time and take action immediately. It admitted that the rules in the Code were not applied correctly and the producer's failure to act was wrong.
- 8.16. The Licensee first claimed that language such as "I want to be spreading these arse cheeks wide as your cock slides in and out" was "saucy" and "flirtatious". However, under questioning from the Committee the Licensee accepted that such language was clearly adult content and unacceptable, even though it suggested that most of the viewers of *Babeworld* would not find it offensive.

## 9. Sanctions Decision

- 9.1. 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>5</sup>.

### The seriousness of the breaches

- 9.2. In terms of content regulation, one of Ofcom's statutory duties is to provide members of the public with adequate protection from offensive and harmful material on television services. The Committee considers that to broadcast content that consists to a great extent of presenters engaging in sexual activity using very explicit sexual language, which has no strong editorial justification, on a free-to-air channel without any form of mandatory protection system or in unencrypted timeslots of encrypted channels, is contrary to generally accepted standards. Such content should be broadcast encrypted. It has the potential to cause harm to minors and/or considerable offence to viewers. Some may come across this material unawares. In the Committee's opinion, such content breaches generally accepted standards even though many regular viewers of 'babe' and similar channels may not find it offensive.
- 9.3. Specifically in this case offence was caused to a viewer by the broadcast of 12 February 2007. This was evidenced by a complaint to Ofcom which was of particular concern to the Committee as it concerned a mother who had discovered her son and his friends watching free-to-air material soon after the

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<sup>5</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.

watershed (21.15) when one of the presenters was using highly explicit and offensive language (e.g. “I want you to spunk in my mouth”).

- 9.4. The Committee takes full account of the fact that Parliament gave Ofcom a specific duty in the Act (section 319(2)(a)) to set standards to protect persons under the age of eighteen. There was in the view of the Committee a high level of sexual explicitness - both in imagery and language (detailed in paragraph 2.9 above) - in the material broadcast. One of its primary purposes, if not its primary purpose, was sexual arousal or stimulation. It was therefore in the opinion of the Committee ‘adult-sex’ material and therefore subject to Rule 1.24 of the Code. In the Committee’s view, the recorded breach of Rule 1.24 was serious because of the frank and detailed nature of the material broadcast, and the seriousness compounded by the fact that it was broadcast between 21.00 and 22.00, soon after the watershed.
- 9.5. The Committee noted the Licensee’s arguments that: the explicit visual material and language on *Babeworld* subject to this sanction proceeding may not have caused offence to many of its viewers; and that the strength of the material was justified by the context, and in particular by the fact that *Babeworld* was positioned in the adult section of Sky’s EPG. The Committee recognised that unencrypted channels in this section of the EPG had a certain amount of extra latitude to show more sexual material. However, this latitude was restricted, and certainly did not extend to content which due to a combination of imagery and language could be regarded as ‘adult-sex’ material. This restriction was principally because of the requirement to protect under 18s.
- 9.6. The seriousness of the breaches is compounded by the fact that they occurred following Ofcom’s letters of 19 June 2006 and 8 September 2006, which were sent to all ‘babe’ channels, including *Babeworld*. These letters placed these channels on notice that Ofcom was concerned about compliance by these broadcasters. The letter dated 8 September specifically referred to the prohibition under the Code of content where the “visuals or the audio or the overall tone is tantamount to adult sex material **and we will intervene** [emphasis in original] if we see such programming. This includes explicit sexual language.” The same letter also pointed out that under the Code it is prohibited to broadcast content with a premium rate service number where the ‘babes’ “[h]ave little or no on-screen interaction with callers; there is no audio other than music; no text messages from viewers are displayed; and include advertising for other products and/or services, e.g. off-screen chat lines...”
- 9.7. On 24 November 2006 the Committee published an adjudication on the Look4Love case ([http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/look4love.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/look4love.pdf)). The decision included guidance and a warning to ‘babe’ channels about broadcasting sexually explicit pictures and language on unencrypted channels. Despite this additional guidance and Ofcom’s warning letters of July and September 2006, in February 2007 *Babeworld* breached the Code again.
- 9.8. The Licensee gave evidence to the Committee that *Babeworld* introduced new compliance procedures as from approximately April 2006, including guidelines to the female presenters. These procedures are referred to in more detail below as mitigating factors. The Licensee stated that there was an experienced producer supervising the output broadcast on 12 February 2007



which was found in breach on the Code. Connection Makers admitted that this producer should have intervened immediately at the time to prevent the broadcast so soon after the watershed of such sexually explicit content and language, but did not do so. Connection Makers now confirmed that it regarded this language as adult content and that it was unacceptable.

- 9.9. In light of all the circumstances, the Committee found that the breaches demonstrated a serious failure by the Licensee to ensure compliance with the Code.

### **Repeated**

- 9.10. The Committee noted that, despite the warnings given to the Licensee in June and September 2006, *Babeworld* promoted a PRS of an adult nature before the watershed in August and September 2006 in breach of the Code. At the same times they also promoted services that did not contribute to editorial content in breach of Section Ten of the Code. In addition, the promotion of an adult service by *Babeworld* on 5 September 2006, led to the channel's ultimate owner (Eckoh Technologies) being fined £10,000 by the PRS regulator, PhonepayPlus (then known as ICSTIS) in November 2006. These breaches provide clear evidence of poor compliance by the Licensee in August and September 2006.
- 9.11. The breaches relating to the promotion of adult chat line before the watershed were in Ofcom's opinion themselves serious. These were not, as the Licensee argued simply related to the operation of PRS numbers in accordance with Section Ten of the Code, but were a matter concerning the protection of under eighteens. It was clear that the promotion of such lines before the 21:00 watershed is not compatible with the Code.
- 9.12. The Committee has also taken account of the fact that some breaches of the Code were repeated. For example, Ofcom recorded breaches of Rules 1.2, 1.3, 2.1 and 2.3 for broadcasts on 8 and 12 August and 15 September 2006 (see paragraphs 2.5 to 2.7 above). As regards the broadcasts on 8 and 12 August 2006, Ofcom also recorded a breach of Rule 10.9 of the Code (premium rate numbers, being a product or service, must not appear in programmes unless part of editorial content or programme-related material).
- 9.13. The breaches relating to the 12 February 2007 transmission therefore represent repeated breaches of the Code, as regards not only Rules 1.2 and 1.3, but Rules 2.1 and 2.3, as well as Rules 10.1 and 10.3. This provided evidence to the Committee that the Licensee, on 12 February 2007, still did not have adequate procedures in place to ensure compliance with the requirements under Sections One, Two and Ten of the Code.
- 9.14. In view of the explicitness of the material broadcast so soon after the watershed, the fact the breaches in question occurred after Ofcom's warnings, and the repeated nature of many of the breaches, the Committee reached the view that the breaches of the Code for the *Babeworld* programme on 12 February 2007 warranted the imposition of a financial penalty.
- 9.15. In determining the starting point for any financial penalty the Committee had regard to: the seriousness of the contraventions (discussed above); any



precedents set by previous cases; and, the need to ensure that any penalty would act as a sufficient incentive to comply.

### **Precedent**

- 9.16. In accordance with the Penalty Guidelines, in considering what level of financial penalty was appropriate, the Committee considered precedents. The Committee agreed with Connection Makers that neither the decision of the Committee against Digital Television Production Company Limited (XplicitXXX)<sup>6</sup>, nor the adjudication against Look4Love for breaches in relation to its 'babe' service, Babestar<sup>7</sup>, assisted the Committee. This was because the facts of these two cases were very different.
- 9.17. The Committee however had regard to another precedent. This was the decision against Video Interactive Television in respect of its service Channel U (dated 21June2005)<sup>8</sup>. This case concerned a music rather than an unencrypted adult channel. In this context it broadcast explicit nude shots of women who appeared to be masturbating between 23.00 and 04.00 and it concerned a variety of breaches under Ofcom's (ex-ITC) Programme Code. The fine imposed in this case was £18,000. The Committee noted the considerable number of differences between that case and the current one (in particular, but not exclusively the time of transmission alongside the promotion of an adult chat line) but nonetheless concluded that a starting figure for a financial penalty closer to, but higher than, this figure was more appropriate than that the financial penalties imposed in the XplicitXXX and Look4Love decisions.
- 9.18. The Committee also took account of various other serious breaches of the Code recorded by Ofcom against different 'babe' channels, including Star Bazaar and LiveXXXBabes (see Broadcast Bulletin 95, dated 22 October 2007) and the representations of the Licensee on these cases. However, in this case, the Committee considered the repeated nature of the breaches of the Code (and in particular those rules relating to the protection of under 18s) made this case more serious. The Committee was concerned to note that despite recording breaches of the Code for the promotion of an adult sex line pre-watershed, the Licensee was, only a matter of months later, transmitting extremely explicit material (and in particular language) just after the watershed in clear breach of the Code.
- 9.19. Connection Makers argued in particular that the explicit language and visuals found in breach of the Code in the Star Bazaar and LiveXXXBabes cases appeared similar to those in the current case, and that Ofcom needed to show a consistent approach in dealing with breaches of the Code by 'babe' channels. The Committee notes that a decision to refer a case involving a serious breach of the Code or Licence to the Committee normally depends on a number of factors, in particular relating to the Licensee concerned. These include the serious or repeated nature of the breaches and the compliance record of the Licensee. On this occasion, there was in the opinion of the Committee a pattern of repeated and persistent breaches of the Code. These occurred over a period of seven months between August 2006 and February 2007 and despite Ofcom's letters of June and September 2006. In the

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<sup>6</sup> Dated 27 July 2004. A fine of £50,000 was imposed

<sup>7</sup> Dated 24 November 2006. A fine of £175,000 was imposed

<sup>8</sup> [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/Achannelu.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/Achannelu.pdf)

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.

- 9.20. However, for the avoidance of doubt, the Licensee and other 'babe' channels should be under no misapprehension that the material broadcast by Star Bazaar and LiveXXXBabes which led to breaches being published in Ofcom Broadcast Bulletin 95, dated 22 October 2007, was not acceptable.

### **Deterrent**

- 9.21. 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. In this case, the Licensee did acknowledge after questioning by the Committee that the sexually explicit language found in breach was unacceptable. However, it was of serious concern that the Licensee continued to maintain for a period that the language described in paragraphs 2.8 and 2.9 could be described as "flirtatious" or "saucy". This had shown a worrying lack of understanding of the requirements of the Code. In the Committee's view, the language in the circumstances of this case was so explicit as to be totally unacceptable and an important factor in deciding that the content in this case was 'adult-sex' material.
- 9.22. Connection Makers also maintained that its compliance procedures before 12 February 2007 were satisfactory and that its programmes fulfilled all the requirements of the Code. As a result the Committee remained concerned that as an unencrypted channel (albeit in the adult section of the Sky EPG), the Licensee did not always appear to recognise fully its duties under the Code to protect viewers from harmful and offensive material, and in particular the under 18s before and just after the watershed. There is clearly a need in this case to ensure that a financial penalty is set which will act as a sufficient incentive for *Babeworld*, and other 'babe' channels, to comply fully with both the spirit and the word of the Code in future.

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

- 9.23. The Committee then considered whether there were any factors which aggravated or tended to increase the level of any financial penalty it might impose.
- 9.24. The Committee took account of the fact that the breaches of Rules 1.2, 1.3, 2.1, 2.1, and 10.9 of the Code were repeated contraventions, which must have resulted from the ineffectiveness of internal compliance mechanisms. It also noted that senior management should have known that breaches like those which occurred in February 2007 could well occur, if for example they employed allegedly experienced producers who permitted such breaches to happen live on air without taking immediate corrective action.
- 9.25. In addition, the Committee had regard to the facts that: the sexually explicit visuals and language were broadcast very soon after the 21.00 watershed; and it is reasonable to infer the Licensee gained financially to some extent from the broadcast of sexually explicit material through increased call revenue.

## **Mitigating Factors**

- 9.26. The Committee then considered whether there were any factors which in its view might limit or decrease the level of financial penalty.
- 9.27. The Committee noted all the submissions as to mitigation made by the Licensee. In particular the Committee took account of the following:
- Connection Makers had cooperated fully with Ofcom's investigation;
  - as from around April 2006 the Licensee to some extent had taken its compliance responsibilities more seriously and put in place some additional controls over the independent company which produces the programme, including weekly meetings and reviews of transmissions made the previous day (although the Committee notes these were not sufficient to prevent the breaches between August 2006 and February 2007); and
  - the Channel took some action to improve compliance after the incident in February 2007, in particular removing the producer of the programme complained of temporarily and giving him further training.

## **Conclusion**

- 9.28. The broadcast on an unencrypted channel of content that consists to a great extent of presenters engaging in explicit sexual activity such as masturbation and using very explicit language, and that contains no strong editorial justification for the inclusion of such images and language, is totally unacceptable. It has the potential to cause offence to viewers and harm to minors. This is especially so in the period immediately following the watershed between 21.00 and 22.00 when young people may be watching.
- 9.29. The Committee notes that Ofcom has recently recorded various breaches of the Code against a number of 'babe' channels, and Ofcom had considered referring these cases to the Committee for consideration of a statutory sanction. (See for example Broadcast Bulletin 95, dated 22 October 2007 and the Note to Broadcasters contained in the same Bulletin). However, these cases did not at the time involve repeated breaches. 'Babe' channels and adult channels generally should not be in any doubt of Ofcom's concerns about compliance in this area. Should such cases be referred to the Committee in future, the Committee will regard them very seriously.
- 9.30. In reaching its decision on the financial penalty, however, the Committee had particular regard to the pattern of repeated and poor compliance displayed by the Licensee with regard to Sections One, Two and Ten of the Code. This was despite various warnings from, and correspondence with, Ofcom.
- 9.31. Having considered the relevant facts as outlined above and all the representations made by Connection Makers, the Committee decided to impose a financial penalty on Connection Makers of £25,000 (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  
Anthony Lilley

30 November 2007