



SKY UK'S RESPONSE TO THE REVIEW OF THE MANDATORY DAYTIME PROTECTION RULES IN THE OFCOM BROADCASTING CODE - CONSULTATION

EXECUTIVE SUMMARY

1. Sky welcomes Ofcom's consultation on the rules around daytime protection rules in the broadcasting code ("the consultation"). Sky strongly supports the proposal to modify the Broadcasting Code to allow daytime pin protections across all content and agrees with Ofcom's analysis in the consultation. In particular we support:
 - I. The conclusion that "the 9pm watershed and mandatory daytime protection [are] complementary tools to protect children from content that is unsuitable for them";¹
 - II. That "pins are most effective when used alongside other protection measures such as the 9pm watershed and guidance/ provision of information on individual content";² and
 - III. That restrictions should be liberalised across all genres and across programmes that are stronger than BBFC15 equivalent content.³
2. In the two years since Sky responded to Ofcom's call for evidence in 2016, consumers' audiovisual content viewing has continued to change. For example, in the Communications Market Report 2017 Ofcom highlights that in the past three years, time spent viewing on TV screens has remained constant, but linear TV viewing has decreased with unmatched viewing increasing. This suggests continued increase in other uses of the TV set (e.g. YouTube).⁴
3. Consumers now expect and demand access to a wider range of content at all times of the day, but as Ofcom rightly recognises in its research, scheduled television remains a core part of viewing. Permitting daytime pin protections would allow the linear schedule to adapt to demands for more relevant content during the daytime, a demand which television viewers are potentially fulfilling with on demand programming and other video content on their TV sets.
4. It is important to note that Sky welcomes the liberalisation of the rules, not because we intend to deploy daytime pin widely and across all channels, but because it provides us with the opportunity to trial the functionality beyond movies and then assess the viewer

¹ Ofcom. Review of the mandatory daytime protection rules in the Ofcom broadcasting code. February 2018. 6.

² Ibid. 26.

³ We agree that the rules on the prohibition on R18 material and any change to the mandatory pin protection on adult content should remain separate from the consultation.

⁴ Ofcom. Communications Market Report 2017. 89.

benefits. In line with Ofcom's careful consideration in this consultation, if permitted we will carefully consider audience reaction before using daytime pin on a regular basis. It is in our interest as a broadcaster and a platform provider to ensure viewers are: (i) protected from potentially harmful content; (ii) not dissuaded from stumbling upon or 'grazing' on our content by the imposition of a pin⁵; and (iii) presented with a range of content on our channels during the day that is attractive to them and meets their expectations.

5. Sky requests that Ofcom not change the time of the watershed on premium movies from 8pm to 9pm. This rule is well understood by our viewers and has been in place for over ten years. Ofcom's sole justification for this change: consistency across all content, is insufficient to justify the disruption and negative consequences that Sky and its customers will suffer. Changing the time of the watershed has the potential to confuse our customers and to reduce the value of the premier movie slot at 8pm which is appreciated and understood by viewers. In order to avoid confusion and to maintain the value of our 8pm premier movie slot, the 8pm watershed on premium movies must be maintained.

Update from Sky's previous submission

6. We have reviewed our evidence and analysis provided in April 2016 and consider that it is still relevant. We would note the following additional points:
 - I. We have not updated our research and evidence since our last submission, but we expect that the trends we identified about the acceptability of the rule change continue to apply two years later and this is borne out by Ofcom's own extensive research as part of the consultation.
 - II. In 2016 Sky launched Sky Q, a new set top box and a better discovery and viewing experience for customers across both linear and on demand. Sky Q is capable of the same mandatory pin functionality as the Sky+HD system.
 - III. Customers will already encounter mandatory pins on some on demand content such as Game of Thrones, or other content we have assessed as requiring additional warnings and protections. Given on demand use on TV platforms has continued to grow in the past two years, more customers will have had to use mandatory pin systems and will have developed greater familiarity with them.

The justification for daytime pin protections

7. Ofcom has a duty to ensure regulatory burdens are not maintained where they have become unnecessary.⁶ While allowing daytime pin can be seen primarily through the lens of plurality of content and platform innovation, we suggest it should also be viewed as a regulatory burden that restricts consumer choice and is unnecessary in 2018: Viewers already have largely unmoderated access to the same content on demand during the day, with no comparable content protection; mandatory pin on premium movies channels has been in place for 13 years and has proved itself an effective model of protection; and both Sky's and Ofcom's research demonstrate audiences are comfortable with the functionality.
8. Sky's experience is that a 'Digital Watershed' is both technically possible on television platforms and more importantly it can give viewers what they want - more control over

⁵ From our own audience analysis we know that linear television viewing during the day includes a significant amount of browsing the EPG for something to watch.

⁶ Communications Act 2003, S6(1).

how they watch programmes, with effective and appropriate protection for the most vulnerable viewers.

9. Mandatory daytime pin would provide equivalent protection to the watershed and similar signalling about the appropriateness for audiences. It would strengthen the protection and range of tools already on offer. Sky's set top boxes have proven functionality that allows viewers to protect their families. This would be a robust and logical development that would reinforce the watershed rather than undermine it.
10. Consumers already have near unrestricted access to video content online where there are no strict regulatory requirements such as pins or watersheds. The only rules are for notified ODPSs that prevent unrestricted access to R18 content, and some protection from hate speech and commercial practices. There are no regulated mandated protections for consumers watching the vast majority of content on YouTube or Facebook. Daytime pin does not undermine television's protections, but continues to protect viewers using the pin technology now available to broadcasters.
11. [x]
12. Ofcom has a primary duty to act in interests of citizens and consumers it is clearly in consumers' interests to have greater choice of content available to them and to have more rational and coherent regulation. We expect Ofcom will want to encourage the take-up and use of parental controls across TV platforms and this could provide a strong incentive for all manufacturers to meet the same standard of protection provided on pay television platforms.

The benefits of daytime pin

13. Sky believes that extending daytime pin protection to a wider range of linear channels would be of significant benefit to viewers. In particular, it would extend the range of high quality, varied content available to all adult viewers while still providing sufficient protection for viewers under eighteen. As noted in Ofcom's research, daytime pin can benefit shift workers and part time workers, but it could also benefit:
 - I. Consumers with insufficient broadband speed to download or stream on demand programmes during the day without frustration. This applies in particular to HD downloads. The time taken to download or stream HD content during the day can put people off from choosing to watch on demand;
 - II. Older people who want to watch premium post-watershed drama during the day rather than late at night; and
 - III. People who prefer to discover a range of content through the linear schedule rather than on demand listings.
14. More flexibility would create opportunities for broadcasters to show a broader range of content. This will include some element of original and UK commissioned content. Sky has invested significantly in UK drama, but we are unable to show much of this during the day. The vast majority is only suitable after the watershed.
15. It costs Sky to re-version and acquire suitable content to fill daytime schedules. Extending daytime pin to entertainment channels would give channels the flexibility to invest in more of the core content that its viewers love, this could include a combination of original programming and acquired content. It would allow channels such as Sky Atlantic, which are aimed at adult audiences, to remain in step with audience expectations.

16. [x]
17. Ofcom has asked about the potential use cases of daytime pin. As previously communicated, use cases will vary across broadcasters and Sky will test customer acceptance of greater use of linear pins before using daytime pin widely. [x]
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Additional comments on technical aspects of daytime pin

18. Sky has undertaken some initial scoping work to assess whether daytime pin is possible on channels on our platform beyond movies channels. We are confident it is technically possible across our platforms without additional box development. There will be some internal scheduling systems development required in order to allow programmes normally locked for scheduling after 9pm to be scheduled earlier in the day (but behind a pin). We anticipate that other broadcasters who use our platform will have to make some small changes to their systems to make use of daytime pin. We are carrying out further technical assessments to understand how all channels carried on the Sky platform (both pay and free-to-air) can use daytime pin.
19. Once we have regulatory certainty on the proposals in the consultation we anticipate we would write to third party broadcasters on the Sky platform to make them aware of the rule change and to instruct them how they can technically achieve it. We would monitor the use of daytime pin to check the right metadata is being provided in order to pin protect programmes, but as with other compliance issues, we expect the individual broadcasters to take responsibility for protecting their programmes adequately.
20. We anticipate we would put in place a limited customer communications plan to make sure our customers understand the change and that they can expect to see some programmes pin protected. This could include, but not limited to, notices on our website, information in the EPG programme guides and on-screen information and announcements around pin protected programmes. Given pin use is very normal and well understood on our platform, our initial assessment is that this will not require extensive communications. We expect Ofcom will also want to communicate publicly on the rule change.
21. In Question 7 of the consultation Ofcom asks about how unconnected and legacy devices would behave with the introduction of mandatory daytime protection rules. The mandatory pin functionality on Sky's set top boxes does not require an internet connection to function, so unconnected boxes will function in the same way as connected boxes. Mandatory daytime pin is already in place for premium movies channels on Sky's set top boxes including legacy boxes and we currently see no reason why mandatory protections won't work on all channels on legacy boxes in a similar way.

Maintaining the 8pm watershed for Premium Movies

22. While we are supportive of Ofcom's proposals for amendments to broaden the current ways in which pin can be used as a suitable form of audience protection - we note that one part of the proposal would have the possibly unintended consequence of bringing in a new additional restriction i.e. a tightening of the current rule with regard to premium subscription channels.
23. Under the current rules, which focus only on an exception for premium subscription film services, these channels consequently have a watershed of 2000. The proposed new

wording of the rules seeks to bring all channels (excluding PPV) under the same rule – and therefore while this permits new channels to make use of the pin functionality, it will conversely move the watershed on premium subscription film services from 2000 to 2100 i.e. this creates a new additional restriction on these channels. Ofcom has not sought to justify this restriction beyond the statement that “we consider that any extension of the mandatory daytime protection should be applied consistently across programmes and films.”⁷

24. The 2000 watershed on these channels has been in effect for many years and viewers of these channels are very familiar with these channels operating differently to other channels. Moving all channels to a 2100 watershed would appear to be unnecessary given that premium subscription film services have been subject to different rules since 2005. Consistency for its own sake is not sufficient to overcome a rule that is well understood by viewers and from which they benefit. As Ofcom acknowledges, there is no evidence to suggest that viewers are unhappy with this current practice, or that the difference in watersheds for such services pose any additional risk. Sky submits that, on the contrary, existing practice supports the opposite view.
25. Sky would expect that viewers would perceive this change as a negative one creating inconsistencies with their previous experience. Our schedulers on these channels are concerned that the optimum viewing experience for viewers will be affected. Although we welcome the flexibility to utilise pin functionality more generally, we also recognise that for some viewers a pin can be an obstacle and therefore seek to only use it where beneficial. Ideally we would wish to retain the ability to schedule films on these channels from 2000 without a pin as this provides the optimal viewing experience for customers. Currently our prime-slot is 2000 as this is where the watershed begins and thus a pin isn't required. If we were required to start films on which we do not want to apply a pin from 2100 this later start time would mean most films wouldn't finish until very late in the evening and consequently many viewers would choose not to watch.
26. Rather than rewriting the rules in a way that would include this backwards step for premium subscription film services, the exception for these kind of channels could easily be retained without creating confusion in the rules. For example the new wording of Rule 1.24 could be altered to the following (proposed new change in bold):

*1.24 : Provided that mandatory daytime protection is in place pre-2100 (or pre-2000 on **Premium subscription film services**) and post-0530, programmes that are unsuitable for children that would usually be scheduled after the watershed, and films up to BBFC 18-rated or equivalent, may be broadcast on television at any time of day. Clear information must be provided with programme and film content that will assist adults to assess its suitability for children, and the mandatory daytime protection which is in place must be clearly explained to all viewers.*

Sky

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⁷ Paragraph 7.6(e) of the Consultation.