

Response to Ofcom's Review
of Participation TV

pact.

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Introduction: the indies

- 1) Pact is the trade association that represents the commercial interests of the independent production sector. We have more than 700 member companies across the entire UK, involved in creating and distributing television, film and interactive content.
- 2) The independent production sector is growing rapidly. The sector generated £1.69 billion in television-related revenue in 2006, up by 12% on 2005.¹
- 3) In addition to their growing economic role, independent production companies have made a valuable contribution to the range and diversity of programming that is on offer to the UK public. By offering an alternative source of content to broadcasters' in-house production departments and to imports, the independent sector ensures diversity of supply in programming.

¹ 2007 Independent Production Census, page 6.

Executive summary

- 1) Programmes and services involving premium rate telephony services (PRS) have been amongst the most serious causes for concern during the recent debate over viewer trust, although the issue of course goes far wider. This has been a hugely damaging series of events - alongside the lamentable way in which members of the public have been defrauded, the industry's credibility and relationship with audiences and Parliament has come under pressure.
- 2) We therefore strongly welcome Ofcom's review of participation TV as a way of addressing at least one significant part of the current problem regarding viewer trust, ie PRS. Ofcom, as part of its primary role of protecting viewers under the 2003 Communications Act,² should absolutely develop as clear and robust a framework for regulating the industry as possible.
- 3) Licence agreements between the regulator and broadcasters are the natural place for such PRS regulation. Such agreements have historically required broadcasters to be accountable for the content they transmit on a wide range of issues, including requirements to adhere to the Standards Code and other UK and European regulation. PRS should not be an exception.
- 4) Pact therefore supports Ofcom's proposal that broadcasters should be directly responsible for PRS compliance throughout the supply chain, and that this should be explicitly stated in their service licence. This would provide a clear accountability at the top of the buyer-supplier chain. Compliance can then be enforced down through the supply chain through commissioners and executive producers assigned to external productions. Ultimately, existing breach of contract clauses between broadcasters and external suppliers provide a more than adequate "back stop."
- 5) In terms of dedicated participation TV, we favour Option 2 - classifying programming as editorial but with new rules added to the Broadcasting Code. This would provide clear rules as to the extent of commercial activity, while allowing PRS services to continue to be offered to the public.
- 6) There is, however, in Pact's view a need for further clarity on whether quiz TV will be an exception, and our support for this proposal is subject to this clarification. We agree, as Ofcom suggests, that a viewer's expectation of a competition-based prize scheme might entail that every individual call would not need to be reflected on-screen.

² Communications Act 2003, Section 3 (1).

Response to questions

Q1. Do you agree that television broadcasters should be directly responsible for PRS in programmes and also for other forms of communication where viewers seek to interact with programmes? Please explain why.

- 1) Yes. We agree with the key recommendation from the inquiry into participation TV led by Richard Ayre, and commissioned by Ofcom, that broadcasters should be directly responsible for PRS compliance throughout the supply chain.
- 2) This would provide clear accountability at the top of the buyer-supplier chain. Broadcasters have several means of then ensuring compliance throughout the entire supply chain, notably via commissioners and executive producers assigned to external productions. Ultimately, a broadcaster can hold an external producer to account through existing breach of contract clauses, which in our view provide a more than adequate "back stop."
- 3) This of course does not preclude initiatives by the production sector itself. Pact, for example, is developing dedicated training, tailored business affairs advice, and Best Practice guidelines for its members regarding issues of viewer trust.

Q2 If so, do you agree that a variation to television licences would be the most appropriate way of ensuring that broadcasters are responsible for such PRS compliance?

- 1) Again, we agree with the Ayre report that the respective broadcast licences should be expanded to make broadcasters explicitly responsible for PRS compliance through the supply chain. Ayre states that Ofcom has power under the Communications Act to make appropriate changes to the television licences it grants, and to the licence regime regarding PRS under Section 120.³ This would provide for a clear and robust framework for ensuring accountability in regard to PRS, providing the protection for the public that is a primary duty of Ofcom under the Communications Act 2003.⁴
- 2) We see no reason why it would restrict broadcasters' right to freedom of expression under the European Convention on Human Rights, Article 10.

³ Report of inquiry into television broadcasters' use of premium rate telephony services in programmes, Richard Ayre, page 49.

⁴ Communications Act 2003, Section 3 (1).

Q3 Do you agree that there is a need for broadcasters to obtain third-party verification that they are in fact complying with the draft obligations set out in Paragraph 2 of the draft licence variation? If so, which of the options discussed in Section 4 do you think is most appropriate? Are there other options? Again, please provide reasons.

- 1) Ofcom must be satisfied that it has an appropriate level of transparency in order to satisfy its primary remit of protecting consumers. However, the precise nature of reporting and verification is a matter for the regulator and the licence holders.

Q4 Do you have any comments on the draft licence variation set out in annex 5? Please support your comments with adequate explanation and provide drafting proposals as appropriate.

- 1) Again, precise drafting of the licence is a matter for Ofcom and broadcast licence holders.

Q5 Do you agree that the draft licence obligations should not be limited to television but should also apply to radio broadcasters? Please provide reasons

- 1) We see no reason why the draft licence should not be applied to radio. However, in terms of how compliance is then monitored, PRS use in radio is more limited, and therefore the cost incurred from an extensive audit may not be proportionate.

Q6 Which of the options proposed in Section 6 do you believe is most appropriate to ensure separation of advertising from editorial content? Please explain why.

- 1) We favour Option 2 - classifying programming as editorial but with new rules added to the Broadcasting Code. Requiring a call to contribute to events on-screen, as this option proposes, would provide clear rules as to the extent of commercial activity permitted, while allowing PRS services to continue to be offered to the public.
- 2) There is, however, in Pact's view a need for further clarity on whether quiz TV will be an exception. We agree, as Ofcom suggests, that a viewer's expectation of a competition-based prize scheme might entail that a large

number of entrants would try and fail, but that every individual call would not need to be reflected on-screen.

- 3) Labelling, under Option 3, would allow a greater level of off-screen activity, and therefore have less commercial impact than Option 2. But we agree with Ofcom that it may raise problems over the "separation principle" under EU regulation, which requires a clear separation between editorial and advertising.
- 4) In Pact's view, maintaining the status quo under Option 1 is not acceptable, given the growth of participation TV and the serious nature of recent deceptions and mistakes. We are also against Option 4, classifying all participation TV as advertising (either teleshopping or self-promotion), as this would have a severe impact on the range of services that the industry is able offer to the public and that the public clearly wants, when provided in a transparent and honest way.

Q7 Do you have any comments on the draft new rules and guidance in respect of Options 2, 3 and 4 set out in Annex 6. Please support your comments with adequate explanation and provide drafting proposals as appropriate.

- 1) We are satisfied with the rules and guidance proposed for Option 2.

Q8 Do you agree that Option 2 clarifies the existing provisions of the Broadcasting Code and therefore should not be limited to dedicated PTV only, but should apply to all editorial content (on both television and radio) which invites viewers to pay to take part? Please give reasons.

- 1) Yes. This would provide an additional safeguard for viewers, and would help create a standard practice across the industry that will limit the risk of uncertainty and further mistakes. Again, however, we would ask for further clarity on the level of on-screen requirement for quizzes, when they occur within general editorial programmes.

Q9 Has Ofcom correctly identified, in Section 6 and the Impact Assessment in Annex 7, the various impacts arising from each option for dedicated PTV? Again, please give reasons.

- 1) We do not dispute Ofcom's analysis of the commercial impact of each option.