

# Ofcom Content Sanctions Committee

<b>Consideration of</b>	<b>Video Interactive Television Plc in respect of its service Channel U</b>
<b>For</b>	<b>Breaches of Ofcom's (ex-ITC) Programme Code:</b> <ul style="list-style-type: none"><li>• section 1.6 (sex and nudity), in showing sexually explicit material on an unencrypted music channel ;</li><li>• section 1.2 (watershed), including inappropriate language in a video during the daytime schedule in;</li><li>• section 8.1(i) (programme related materials and services), in promoting the sale of a commercial product within programmes; and</li><li>• section 8.2 (use of premium rate telephone services in programmes) in promoting premium rate telephone numbers.</li></ul> <b>Breaches of Ofcom's (ex-ITC) Advertising Standards Code:</b> <ul style="list-style-type: none"><li>• section 11.1.2 (premium rate telephone services) in advertising adult chat/text lines;</li><li>• section 2.1.1 (separation of advertisements and programmes), in failing to ensure a clear distinction between programmes and advertisements; and</li><li>• section 5.4.2 (superimposed text), including illegible text.</li></ul> <b>Breach of Ofcom's (ex-ITC) Code of Programme Sponsorship of section 18.1 (advertiser references in game shows and viewer competitions).</b> <b>Breach of Licence, condition 11 (retention and production of recordings).</b>
<b>On</b>	<b>Various dates in March, May and June 2004</b>
<b>Decision to Fine</b>	<b>£18,000</b>

## Summary of Decision

For the reasons set out in full in the Decision below, the Ofcom Content Sanctions Committee, ("the Committee") found as follows:

1. Video Interactive Television Plc ("VIT") is licensed by Ofcom to run the satellite service Channel U. It is a music channel with a strong interactive element that broadcasts urban music videos and culture from the hip hop world. Its primary audience, according to the licensee, is young viewers, mainly in inner city areas.

2. In relation to material transmitted between March and June 2004, Ofcom found VIT in breach of various provisions of the Programme Code, the Advertising Standards Code and the Code of Programme Sponsorship (summarised above and detailed in the Decision).
3. Ofcom viewed the number of breaches and the licensee's apparent inability to comply with Ofcom's codes as serious. The legacy regulator, the Independent Television Commission, had the year before recorded breaches against VIT and warned them that further breaches "would lead to the consideration of sanctions". Accordingly, the matter was referred to the Committee for consideration of a statutory sanction. The Committee heard representations from VIT before deciding whether to impose sanctions.
4. VIT did not dispute the breaches which had been found against them and admitted that their compliance systems and procedures had been deficient. The licensee accepted that the breaches and its poor compliance record were serious. VIT representatives explained that it was a very small company which had placed over-reliance on its former Chief Executive Officer ("CEO") whose responsibilities had included administrative and compliance issues as well as maintaining the company's relationship with the regulator. Paul Dixon, the Chairman of VIT, made submissions to the Committee that the former CEO had failed to keep the senior management team informed of the regulatory problems and had lied to him whenever he had asked if the company had any regulatory issues. VIT explained to the Committee that it has been putting new administrative structures and compliance procedures in place to ensure that future breaches do not occur.
5. The Committee took into account as aggravating the seriousness of the breaches their repeated and continual nature and the fact that these had occurred despite VIT having already been subject to three ITC decisions for breaches by Channel U in three consecutive months in 2003. The Committee was particularly concerned to hear submissions that the Chairman and Board had been unaware of any breaches at all, including the ITC's decisions in published in 2003 and that there had been such a sustained period of non-compliance during which time the former CEO was effectively operating alone with apparently no checks and controls in place.
6. The Committee was also concerned that Channel U was a channel which, by its own admission, targets children, in particular from inner city areas, but had nonetheless been advertising adult premium rate numbers and showing explicit sexual material.
7. There was also evidence of repeated breaches of code requirements which requires programming and advertising to be kept separate. First, these rules are there to ensure transparency for viewers and second to ensure that licensees do not exceed the limits on advertising minutage which could lead to an unfair commercial advantage. In addition, it was not clear from the evidence presented to the Committee that these breaches were not deliberate or that the company had not received any income as a result.

8. In the Committee's view all the representations it heard were directed at blaming its former CEO for the compliance failures. Not only should the appropriate checks and balances have been in place, but in the Committee's view, the Chairman and the Board ought to have been aware of what was going on, particularly as VIT is, by its own admission, a small company.
9. Taking all these matters into account, the Committee determined that the Code breaches were so serious that a sanction by way of a financial penalty was necessary. It concluded that in view of the seriousness of the breaches and taking into account all the circumstances, an appropriate fine was £18,000 payable to Ofcom for forwarding to The Treasury.

## **Decision**

1. The Ofcom Content Sanctions Committee ("the Committee") met to hear the submissions of Video Interactive Television Plc ("VIT") in respect of its service Channel U (TLCS 594) before considering whether to impose sanctions on it for breaches of the Programme Code, the Advertising Standards Code and the Code of Programme Sponsorship (each formerly codes of the Independent Television Commission) and condition 11 of its licence. The breaches had been continual, had occurred over a sustained period and they followed a series of ITC findings of breaches by VIT in 2003 (ITC Complaints and Intervention Report Nos 13, 15 and 19).

## **The need to consider sanctions**

2. Ofcom received complaints about material broadcast on various dates between 23.00 and 04.00. Channel U broadcast material which was too sexually explicit for showing on an unencrypted channel in breach of section 1.6 of the Programme Code (sex and nudity) in Channel U's 'XXXU' slot, in particular in its 'Hip Hop Honeyz' videos. The videos included explicit full frontal nude shots of women who also appeared to be masturbating.
3. Ofcom received a complaint about material broadcast on 11 June 2004 at 19:18. Channel U broadcast a music track '*Fit But You Know It*' (remix) by 'The Streets' which contained lyrics which were unacceptable for daytime transmission as they contained swearing and sexual language (e.g. "she was on my dick"). The video was found in breach of section 1.2 of the Programme Code (watershed).
4. Ofcom received a complaint about material broadcast on 28 April 2004 at 17:57. Channel U broadcast a music video by the artist Wiley, which at the end displayed the text "Single Out Now". This information did not appear on the video when shown on other music channels. Ofcom considered the inclusion of the information at the end of the video to have breached section 8(i) of the Programme Code which prohibits the promotion of commercial products or services within programmes.
5. Ofcom requested Channel U to supply output in relation to a viewer complaint about an unacceptable sectarian message shown during Channel U's 'TXT TO TV' slot (in which viewers send text messages to the channel). The text message read "No Surrender UVF". The channel acknowledged the message was displayed but was unable to supply the output as it had recorded only 30 days of output (the licence stipulates 60

days). Ofcom found Channel U in breach of condition 11 of its licence for failing to keep a recording of its output for 60 days.

6. In the advertising break preceding one of the Hip Hot Honeyz music videos broadcast on 8 March 2004 there were a number of advertisements for adult premium rate services. At least two of the numbers advertised had the prefix 0905 and were for adult entertainment services. Ofcom found the advertising in breach of rule 11.1.2 of the Advertising Standards Code which restricts the advertising of premium rate services of a sexually explicit nature to encrypted adult entertainment channels.
7. Following the advertising break and immediately preceding the same video, a promotion for the Hip Hop Honeyz video featuring Snoop Dog was broadcast. It was not clear that this promotion was in fact an advertisement and Ofcom found Channel U in breach of rule 2.1.1 of the Advertisement Standards Code (separation of advertisements and programmes).
8. In another video on 8 March 2004 at approximately 23:35, premium rate telephone numbers for ring tones appeared in breach of section 8.2 of the Programme Code. Ofcom noted that the inclusion of the promotion of ring tones was a repeat breach of the Programme Code (VIT was found in breach by the ITC in June 2003).
9. In relation to a graphic promoting a competition on the channel transmitted on 11 May 2004, Ofcom found that the price information displayed was too small to be legible and was thus in breach of section 5.4.2 of the Advertising Standards Code (superimposed text). Another viewer promotion on the same date included frequent references to branded prizes and to the prize donors. This was found to be in breach of section 18.1 of the Code of Programme Sponsorship.
10. In its correspondence to Ofcom during investigation of the breaches, VIT explained that Channel U was making a real difference to peoples' lives. It said the channel aimed specifically to provide support to UK based artists, particularly in the urban music scene which centred around deprived inner city areas. Channel U's primary audience was children from these areas where violence is common and the channel had taken a positive decision to ban videos which advocated gun crime and violence. Amongst other comments, Ofcom also noted that VIT had explained that the mistakes were not systematic or deliberate and that Channel U had taken effective steps to deal with any problems which had emerged. Despite this, the company failed on several occasions during the course of the investigation to respond to Ofcom's requests for information.
11. The Committee met to hear the submissions of VIT before considering whether to impose sanctions on it for breaching the relevant codes and the licence.

### **Relevant considerations**

12. VIT confirmed to the Committee that it did not dispute Ofcom's findings and that it wished to confine its submissions to the Committee to the company's compliance failures. The Committee was nevertheless

concerned by the licensee's submissions that the breaches should be seen in the context of how few complaints were actually received. These submissions appeared to the Committee to indicate that VIT still did not fully accept the seriousness of the breaches.

13. Paul Dixon, the Chairman of VIT explained that neither the Board nor anyone else in the company (apart from the former CEO) had had any knowledge of the breaches that occurred in 2004 and that they were similarly ignorant about the ITC's findings which were published in 2003. The Committee heard submissions that the compliance failures only began to come to light after Paul Dixon was asked to sign a cheque to the Inland Revenue to pay a fine for a late VAT return. Ensuing investigations disclosed numerous letters and emails which had never been opened. These included correspondence from Ofcom and explained why several letters from Ofcom had gone unanswered. Paul Dixon made submissions explaining that the former CEO, whose responsibilities had included administrative and compliance issues as well as maintaining the company's relationship with the regulator, had lied to him whenever he had asked if the company had any regulatory issues. Paul Dixon said he was shocked to learn about the breaches and assured the Committee that in all his experience of running companies he had never been involved in a company that had even filed a late VAT return, let alone any compliance problems.
14. The Committee noted submissions that the former CEO had been replaced and was no longer working for the company (although he continues to be a shareholder). The Committee also took into account the licensee's representations that it had been putting new administrative structures and compliance procedures in place to ensure that future breaches do not occur. These included ensuring that a minimum of two employees view videos for their suitability and, if in any doubt, consult the new CEO (who has overall responsibility for compliance issues). The licensee has also embarked on the retraining of employees. The broadcaster has also invested money in improving its tape retention facilities and provided re-training of its employees.
15. However, notwithstanding the changes that have been made, the Committee regarded the breaches as serious, particularly given the volume of breaches over such a sustained period and the licensee's history of compliance failures. The nature of the breaches also concerned the Committee, especially as Channel U's main audience is children and so many of the breaches related to the transmission of adult material too sexually explicit for an unencrypted channel, as well as the transmission of swearing and sexual language unsuitable for pre-watershed schedules and the advertising of premium rated services of a sexual explicit nature.
16. In relation to breaches of code rules concerning the separation of advertising and programming (to ensure no unfair commercial advantage), the Committee noted the submissions of VIT's Financial Controller, Neil Gallagher, that he had not been able to find any evidence of above the line income attributable to these breaches. However, the Committee remained concerned that in reality the broadcaster had no way of knowing whether any other form of income had been received. This was of particular concern in view of the licensee's representations that these mistakes, which blurred the line between commercial and editorial,

were happening without the licensee's knowledge or understanding of how or when. The Committee also remained unable to see how it can be definitively said that these breaches were not deliberate, given that the representations the Committee heard about the former CEO acting as a 'loose cannon'.

17. In any event, the Committee was concerned that breaches of this degree of seriousness should have gone unnoticed for so long at all levels of the company, particularly given its size; and that this was apparently due to complete lack of effective checks and balances.

### **Appropriate sanction**

18. Taking all of the above considerations into account the Committee has determined that a sanction by way of a fine is necessary.
19. By the Communications Act 2003, section 237(3), a financial penalty for VIT may not exceed the greater of £250,000 or 5 per cent of VIT's qualifying revenue for the relevant period (year ending 2003). Once received by Ofcom, any fine is forwarded to The Treasury.
20. On the view the Committee took of the seriousness of the Code breaches that had occurred and of all the other considerations mentioned above, the Committee considered a financial penalty of £18,000 was appropriate. The amount reflects Ofcom's concern about the nature and volume of the breaches and the continual and sustained level of compliance failures.

### **Conclusion**

- 21 **VIT, in respect of its service for Channel U, and taking into account the licensee's history of compliance failure and the repeated and sustained nature of the breaches, is fined £18,000 for seriously breaching:**
  - **the Programme Code by showing adult material on an unencrypted music channel, promoting the sale of a commercial products within programmes and promoting premium rate telephone numbers within programmes;**
  - **the Advertising Standards Code by advertising adult chat/text lines, failing to ensure a clear distinction between programmes and advertisements and including illegible superimposed text;**
  - **the Code of Programme Sponsorship by including advertiser references in a viewer competition; and**
  - **Condition 11 of its licence by failing to comply with its obligation to retain and produce recordings**

### **Content Sanctions Committee**

Richard Hooper  
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21 June 2005