



Guidance on the use of targeted advertising replacement and its effect on a television service's licensing status and licence requirements

Guidance
Publication Date 4 August 2015

Guidance on the use of targeted advertising replacement and its effect on a television service's licensing status and licence requirements

Introduction

- 1) Ofcom has received enquiries from a number of licensees about the use of new technologies that allow broadcasters to replace advertisements shown as part of a linear broadcast stream with alternative targeted advertisements.
- 2) These technologies enable insertion (by the broadcaster or – with the agreement of the broadcaster concerned – by a third party such as a platform operator) of advertising on to streamed linear broadcast services. In some cases, the broadcaster or third party uses data collected from customers in order to target adverts more directly.
- 3) These technologies could also enable the insertion of advertising on to channels without the agreement of the broadcaster. This would create a separate licensable service for the reasons set out below.
- 4) This type of advertising replacement is not considered to be video-on-demand as it is not viewed at a time of the viewer's choosing, rather the advertising breaks take place within the linear service as part of the programme schedule.
- 5) Ofcom recognises that targeted advertising replacement is a new technology and is likely to develop over time, and so the position regarding this type of technology may need to be reviewed in future. We are providing this guidance to help broadcasters during this development period about the licensing position of services using targeted advertising replacement technologies.

Statutory position

- 6) Section 232 of the Communications Act 2003 ("the Act") sets out the statutory definition of a Television Licensable Content Service ("TLCS"). Ofcom considers that a targeted advertising replacement facility of the type described above would fall within that definition. It would constitute part of a linear service of television programmes (which can include advertisements) operating around a schedule. Although the advertisements broadcast to viewers would differ according to postcodes or other data, this is not fundamentally different to a service which is only available to subscribers, owners of a specific piece of receiving equipment or people living in a different region.

Ofcom's existing licensing guidance

- 7) Ofcom has published guidance¹ regarding the position of the licensing status of TLCSS broadcast into multiple territories ("the multiple territories guidance"). The multiple territories guidance states that, *"In determining whether different feeds (versions) of a 'service' need separate licences, Ofcom will apply the relevant statutory provisions on a case by case basis, taking into account all relevant circumstances."*
- 8) The multiple territories guidance notes that there are some situations where variations do not necessitate multiple licences. It gives illustrative examples of purely time shifted ("+1") services, services dubbed into another language with no other changes, and services with very occasional regional variations. However, it states that: *"any service that can properly be regarded as a separate TLCS service needs a separate TLCS licence"*. It makes it clear that where multiple feeds differ in advertising content, Ofcom normally considers these feeds to be different TLCSSs, each requiring a licence.

The multiple territories guidance was published principally to address the issue of broadcasters who are providing variations to their services to target different Member States. It remains in force, and remains particularly relevant to feeds targeting multiple territories. However, Ofcom considers there are some relevant differences between these and services incorporating advertising replacement technology.

Targeted advertising replacement, in the control of the broadcaster, will not normally need an additional licences

- 9) As noted in the multiple territories guidance, Ofcom will apply the relevant statutory provisions on a case by case basis, taking into account all relevant circumstances. However, in general Ofcom considers that, where targeted advertising replacement is provided by the licensed broadcaster or with its agreement, its provision is part of the same licensed service and does not require additional licences. This is because, as the technology currently exists, it involves permutations to the service based on a selection of a finite set of advertisements within a defined geographic territory. Many of the permutations of adverts received by target groups are likely to be very similar to each other, and we do not consider the intention of section 232 to be served by requiring a potentially very large number of licences in the context of variations from within a finite set of advertisements.

It may also be possible for this technology to be used to insert or replace advertising without the agreement of the broadcaster. Leaving aside any other issues that may arise from such use of technology and considering only the licensing position, in such a case, the use of the technology would be unlikely to be seen as under the control of the TLCS licence holder, and therefore would not form part of the licensed service. It is likely that

¹ <https://licensing.ofcom.org.uk/binaries/tv/licensing-position.pdf>

- 10) this would then form a separate licensable service requiring its own TLCS licence. Section 363 of the Act requires that the provider of the service is the correct person to hold the licence.² The separate licence holder will be responsible for compliance with the relevant Codes.

What other Ofcom requirements apply to the use of targeted advertising replacement?

- 11) Licensees are reminded that all relevant content and scheduling requirements apply to advertising³ (or self-promotional material)⁴ broadcast via targeted advertising replacement technology.
- 12) Licensees are also reminded that, in accordance with Condition 11 of their TLCS licence, they are required to make and retain recordings when providing this type of service. Given the high number of possible permutations of the advertising, we recognise that it may be difficult to make and retain comprehensive off-air recordings. Therefore licensees using this type of technology should write to Ofcom stating how they intend to produce recordings of advertisements on request to either Ofcom or the Advertising Standards Authority.
- 13) Ofcom considers it would generally be sufficient for licensees to:
- a) make and retain recordings of the individual advertisements being served to viewers via the technology; and
 - b) retain logs of information by which they can demonstrate to Ofcom which advertisements had been provided on their service, and at which dates and times.
- 14) Licensees should note that the guidance provided in paragraph 13 above is strictly limited to circumstances in which broadcasters are using targeted advertising replacement of the type described, and is subject to change by Ofcom from time to time, in particular as technologies develop.

² This is explained further here: <https://licensing.ofcom.org.uk/binaries/tv/service-provider.pdf>

³ [The BCAP Code: The UK Code of Broadcast Advertising](#) and [The Code on the Scheduling of Television Advertising](#)

⁴ [The Ofcom Broadcasting Code](#)