



SUBMISSION BY CHANNEL 5 BROADCASTING LTD TO OFCOM CALL FOR INPUTS TO ITS MANDATORY DAYTIME PIN PROTECTIONS REVIEW

Channel 5 welcomes the opportunity to submit this short paper setting out our views on the possibility that the mandatory daytime PIN protection rule may be extended.

We have no argument with Rule 1.24 of the Broadcasting Code. Films are a distinct genre and, as the rule applies only to subscription film channels, only viewers who have actively chosen to subscribe to such channels are affected by it. But there would be differences of degree and of kind if the regime were extended to all television: differences of degree, because of the sheer volume of programmes currently shown after the 9pm watershed that could then be made available before it; and differences of kind because, while film is a discrete genre, such a change could lead to the generality of television viewing becoming available.

Channel 5 is opposed to such a change. We believe it would undermine the watershed; it would mean there was no longer a level playing field between pay and free-to-air channels; and it would lead to some shift in viewing from free-to-air to pay channels, thereby diminishing the ability of the former to invest in new content. We address each of these issues in turn.

Research published by Ofcom in the last week shows continued widespread understanding and acceptance of the watershed. Ofcom reported that “nine in ten (90%) adult viewers were aware that broadcasters must not show television programmes that are unsuitable for children until after a certain time in the evening..., with awareness of the watershed consistently high since 2005”¹. Only a small minority of viewers (14%) thought the watershed should be earlier than 9pm.

¹ Ofcom, *UK audience attitudes towards broadcast media* 21 April 2016 page 24

As more than half of all homes have pay subscriptions, if pay channels could screen post watershed content before 9pm, a majority of viewers would be able to watch such programmes earlier than now. The effect of this over time would be a diminution of the clarity of the watershed. It would no longer be so widely understood as the gold standard for protecting children from inappropriate content.

There would also be a risk of some parents taking a lax approach to allowing children to watch such content, as over time they became used to accessing PIN protected content before 9pm. The protection the watershed provides would be weakened.

It is of course true that much post watershed content is available on many TV sets through broadcasters' catch-up services (which include PIN protection for challenging content). But there remains a crucial difference between how viewers decide what to watch. On the one hand viewers are presented with a choice of live channels from which they select the programme(s) they wish to watch; but catch up services require viewers actively to seek out their choice of programmes. And as 85% of viewing is still to live television and many homes do not have catch-up services, the linear schedule – with the watershed at its core – remains the norm.

The end-to-end PIN protection which Ofcom envisages would only be feasible on pay platforms, where the technology is controlled by the platforms. The free-to-air platforms, especially Freeview with its base in the horizontal equipment market, would not be able to introduce such technology for all their viewers. So pay channels available only in pay homes where PIN protection technology was available could avail themselves of the opportunity to schedule post watershed content early; while free-to-air channels broadcasting across all platforms could not.

The effect of this would be to remove the regulatory level playing field between pay and free-to-air channels that has existed heretofore, with all channels abiding by the same rules in Ofcom's Broadcasting Code. Instead, pay channels could schedule programmes before 9pm that some viewers would find more compelling than programmes on free-to-air channels constrained by the watershed provisions of the Code.

This move could be seen as widening consumer choice – but it would also have the effect of reducing competition.

The proposal would inevitably lead to some shift in viewing from free-to-air channels to pay channels. This would in turn diminish the revenues of free-to-air broadcasters and their ability to invest in content. In the case of the commercial public service broadcasters, which are obliged to be free-to-air, this would place additional pressures on their ability to satisfactorily fulfil their licence obligations.

We have one final point. Rule 1.24 allows pre-9pm screening of PIN protected films “up to BBFC 15-rated” – so 18-rated films cannot be shown. But there is no equivalent to BBFC ratings on television. So extending the Rule to all post-watershed content would mean some programmes with content more challenging than 15-rated films would be available before 9pm, further eroding current regulation.

Channel 5 Broadcasting Ltd

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