

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Broadcasting Code Review

To (Ofcom contact): Sara Winter

Name of respondent: Adam Bowie

Representing (self or organisation/s): Absolute Radio

Address (if not received by email):

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Please tick below what part of your response you consider is confidential, giving your reasons why

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Name Adam Bowie

Signed (if hard copy)

Absolute Radio Response to the Ofcom's Broadcast Code Review

4 September 2009



Introduction

Absolute Radio welcomes this opportunity to make some long-needed changes to the Broadcast Code.

Like many of our commercial radio industry peers, Absolute Radio believes that a full review of these sections of the code is crucial to the future of commercial radio in the UK.

Stations are looking to increase the share of their revenues that come from non-spot activities and that primarily means an increase in sponsorship and promotional (S&P) activity throughout the industry. Advertisers are similarly looking at new ways to break through the "clutter" of an industry largely reliant on spot advertising up until now. And listeners are looking for their commercial radio services to be "de-cluttered," and become more listenable. This is especially the case when commercial radio has to fight with strong BBC services for market share.

Absolute Radio currently has 31% of its revenue come from S&P, compared with an industry average of approximately 20%¹. We are therefore strong advocates of a relaxation of regulation, and want to see a code fit for purpose in the 21st Century.

Absolute Radio welcomes Ofcom's own research findings² which show that consumers show "a clear appetite for some relaxation of Ofcom's rules." That same research, we note, shows a surprise amongst listeners at the level of regulation stations must adhere to.

We believe that listeners have a far greater understanding of how commercial references can be embedded into programming without breaking the editorial trust that listeners have with stations. Ofcom's own research supports this thesis. The research makes clear that transparency is of far greater value than the outdated concept of separation.

Listeners clearly prefer that commercial messages are embedded within the programming itself, rather than suffering interruptions. Therefore it's critical that for commercial radio to prosper, stations must be able to deliver clever and creative commercial executions that provide increased enjoyment to listeners without overly interrupting their listening.

Ofcom uses five principles to base its proposed Section 10 around: editorial integrity, separation, transparency, consumer protection and unsuitable sponsorship.

¹ RAB

² Essential Research, Ofcom, June 2009

Alongside the rest of the commercial radio industry, Absolute Radio believes that a simpler and clearer framework could be based solely around editorial integrity and transparency.

The principle of editorial integrity means that broadcasters would at all time retain full editorial control of all programming, and any promotional references in editorial output would be editorially justified. In effect, this supersedes the need for specific reference to editorial independence.

Similarly adopting a principle of transparency, would mean accepting that listeners are able, at all times, to be able to understand where a commercial message is being delivered even if there is not a cut-and-dried distinction between programming and advertising. Ofcom's research backs up this belief, and this effectively removes the need for separation which is in many cases un-desirable by listeners.

Fundamentally, Absolute Radio believes that the revised Section 10 of the code that Ofcom is suggesting vastly increases the amount of regulation; something that is completely at odds with Ofcom's stated duty to "remove unnecessary regulation."

By increasing the overall size of the code, Ofcom runs the risk of producing something that is harder for stations to adhere to, being less user-friendly.

Absolute Radio believes that a more generalised approach is preferable. Ofcom's proposed Section 10 considers most commercialised elements of a station's output as it stands today, but implicitly that prevents future new commercial models from being adopted without going through a lengthy code review at some date in the future.

Absolute Radio would instead prefer that Ofcom adopted an alternative industry-backed version of the code.

Commercial Radio's proposed Section 10

Principles

- All programming must be executed with editorial integrity
- Any commercial influence over editorial must be transparent

Rule 1: Radio broadcasters must retain editorial control over all programming content.

Rule 2: Promotional or non-promotional references to a brand, product or service in editorial output must be editorially justified.

Guidance – categories of activity which may be compatible with this rule, depending on transparent execution and editorial justification, include (but are not limited to):

- *Public service campaigns*
- *Interviews with entertainment figures as part of a promotional campaign, for example, for a film or book.*
- *Premium-rate numbers which allow interaction*
- *Inducements for listeners to access further content (including commercial content) via the radio station's or third parties' websites*
- *Promoting the availability of the music heard on a radio station for download*
- *Promoting odds or ticket sales information relating to events*

- *Scene setting at outside broadcasts*
- *Promotion of material which is directly linked to or derived from programming*
- *References to sponsors within sponsored programming*
- *References to sponsors within sponsored competitions*

Rule 3: If the inclusion of references to a brand, product or service in programming is influenced by a commercial arrangement between a station and a third party, this must be made transparent to listeners throughout the relevant programming and in all programme trails.

Guidance – transparency may be achieved through:

- *Sponsor credits (pre-recorded or live)*
- *Presenter explanations*

Rule 4: Sponsor credits may include short sales messages without the need for editorial justification.

Rule 5: Any commercial references included in programming must comply with all the relevant requirements of the BCAP Broadcast Advertising Standards Code.

Guidance:

- *all advertising claims within programming (including within credits and trails) must be pre-cleared, either internally or (for special categories) by the RACC.*
- *no third party that is prohibited from advertising may sponsor programming, nor influence programming content.*

Commercial References in Radio Programming Rules (Code Section Ten)

Question 26

- a) Do you consider that the rules on commercial radio would benefit from being separated from those for television?**
- b) Do you agree with the introduction of the proposed new Section Ten on commercial references in radio programming?**
- c) If you do not agree with the proposed new Section Ten, please explain why and suggest alternative wording where appropriate.**

Yes. As Ofcom notes, radio is not subject to the AVMS Directive which dictates many of the proposed changes to television elements of the code.

It's therefore clearly preferable that radio is completely separated from television in the code. Furthermore, although radio and television are both broadcast media, the differences between the two and the regulatory regimes in which both exist are completely different.

As mentioned in our introduction above, Absolute Radio would prefer to see Ofcom adopt the industry-backed option for the Section 10 of the code. Therefore, although we're answering this question and others going forward, our response should be considered in light of that overall view.

Question 27

a) Do you consider that it is appropriate for Ofcom to introduce the proposed rules concerning content-related promotions? If so, please explain why.

b) If not, please explain why.

c) Do you agree with our assessment of the impact of the proposed rules on listeners, the radio industry and any other parties? Please provide any evidence or data you have to support your answer.

d) Do you consider that the proposed rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection?

e) If not, please explain why, suggesting drafting changes where appropriate.

Absolute Radio has a fundamental issue in regard to this section of the proposed Section 10 of the code.

While the revised code would seem to have many good points to it, Absolute Radio believes that it should be down to the individual station how commercial references are included within radio programming, while adhering to principles of editorial integrity and transparency as outlined above.

Furthermore, rule 10.19 in particular seems unnecessarily restrictive in determining exactly what elements of a product or service may be included in a content-related promotion.

In paragraph 7.32 of Ofcom's consultation document, Ofcom notes the following:

If a broadcaster currently places a brief traditional spot advertisement next to content to which it is directly related, Ofcom would also be likely to consider it inadequately separated.

Absolute Radio had a recent example that's pertinent to this whereby the station ran short ten second advertisements – "blipverts" – for a U2 album directly after the band's latest track had been played on-air. Separation between editorial content and advertising was provided via station sweepers and trailers. Although Ofcom was unable to approve of this commercial activity in advance of broadcast, Absolute Radio did seek advice and guidance from Ofcom before running the activity.

From a listener's perspective, there was a clear difference between the two, yet this highlights the generally prescriptive nature of Ofcom's approach to regulation which removes the opportunity to provide innovative new commercial opportunities for stations.

Question 28

a) Do you consider that it is appropriate for Ofcom to introduce the proposed rules concerning outside broadcasts sponsored by the venue? If so, please explain why.

b) If not, please explain why.

c) Do you agree with our assessment of the impact of the proposed rules on listeners, the radio industry and any other parties? Please provide any evidence or data you have to support your answer.

d) Do you consider that the proposed rules would provide adequate consumer protection, subject to the maintenance of full transparency concerning sponsorship arrangements?

e) If not, please explain why, suggesting drafting changes where appropriate.

As Ofcom notes from its research findings, outside broadcasts are appreciated by listeners and can be valued programming activities.

These proposed rules have some clear problems inherent in the provisos that sponsor references must be both “editorially justified” and not be “unduly prominent”. Furthermore the proposed rule 10.32 preventing references that encourage the purchase or rental of the sponsor’s products means that in practice, any reduction in regulation is minimal.

As mentioned previously, we prefer to use the principle of editorial integrity to determine how sponsor credits and references can be worked into programming.

Additionally there are issues surrounding where an outside broadcast (OB) starts and finishes. The introductory explanation suggests that if the lead presenter is hosting at a remote location then it would be considered to be an OB. But suppose one half of a presenting duo is present while the other is in the studio, does the event constitute an OB?

Given that editorially justified references would be permitted in an OB, yet the same references in a studio should be prohibited, severe conflicts could occur – especially in an instance where the same sponsor is involved in both the studio and OB elements of the broadcast.

Question 29

a) Do you consider that it is appropriate for Ofcom to introduce the proposed rules concerning sponsored listener competition features? If so, please explain why.

b) If not, please explain why.

c) Do you agree with our assessment of the impact of the proposed rules on listeners, the radio industry and any other parties? Please provide any evidence or data you have to support your answer.

d) Do you agree that the proposed rules would provide adequate consumer protection, subject to the maintenance of full transparency concerning sponsorship arrangements?

e) If not, please explain why suggesting drafting changes where appropriate.

Absolute Radio welcomes the relaxations Ofcom is proposing in its rules surrounding “promotions” or sponsored listener competition features. In particular we welcome the proposal that allow the sponsor to become an integral part of the competition itself. This is something that Absolute Radio has long argued for, and believes remains transparent to listeners.

Ofcom’s own research into this area shows that listeners accept some degree of sponsor involvement within the actual competition mechanic itself.

Absolute Radio holds editorial integrity to be very important, and we’re always looking for creative ways to present sponsored programming in such a way as to make compelling radio for listeners as well as providing our advertisers with a return on their investment in on-air promotions. It’s critical that both sides are carefully balanced.

However, that said, we note that Ofcom refers in paragraph 7.70 that there are no specific rules for sponsored listener competition features. Overall, we feel that adopting the industry’s proposed code would simplify legislation and allow stations a fuller ability to develop new creative commercial models.

Question 30

a) Would you consider that it is appropriate for Ofcom to introduce rules that would allow Public Information Programming (as described above)? If so, please explain why. If not, please explain why not.

b) If Ofcom were to introduce rules in relation to Public Information Programming:

i. Are there any potential programmes that you believe could comply with the potential rules but that you consider would be undesirable or arguably not in the public interest? If so, please give details.

ii. What impact (e.g. social, economic, equality) do you think the potential rules would have on listeners, the radio industry and any other parties? Please provide any evidence or data to support your answer.

iii. Do you consider that the potential rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection? If not, please explain why.

iv. Do you consider that additional or alternative safeguards to those included in the draft proposed rules are necessary? If so, please provide details.

v. Specifically, should there be any restriction on the type of non-commercial, not-for-profit entities permitted to fund Public Information Programming, and if so, what restrictions?

vi. Do you consider that it would be appropriate for Ofcom to review these rules two years after their introduction? If not, please explain why.

Absolute Radio is in broad agreement with Ofcom's proposed Public Information Programming rules. Clearly the current sponsorship regime does limit what agencies such as the Central Office of Information is able to provide in terms of programming, and we welcome the relaxation that these rules allow.

However, some of the commercial limitations seem to be unnecessarily restrictive. It's not clear whether, for example, the charitable arms of commercial organisations would be able to fund programming if they share a commercial trade mark or name. For example, the Google Foundation is a private foundation, yet shares a prominent and commercial trade mark and name. Under Ofcom's proposed rules, they'd be prevented from providing Public Information Programming on, for example, new energy technologies.

Question 31

a) Do you consider that the proposed new Section Ten would benefit from the introduction of new meanings?

b) Do you agree with our proposed new meanings for Section Ten?

c) If you do not agree with our proposed new meanings, please explain why and suggest alternative wording where appropriate.

In general terms, Absolute Radio welcomes the definitions that Ofcom is proposing including “programming”, “commercial references” and “products and services.”

However we believe that exceptions can arise from these seemingly simplistic definitions with the result of perhaps confusing listeners. For example sponsored editorial features and potentially new commercially sponsored properties are clearly not included.

Question 32

a) Do you consider that the introduction of new Principles in relation to Section Ten is appropriate?

b) Do you agree with the proposed new Principles for Section Ten?

c) If you do not agree with our proposed new Principles, please explain why and suggest alternative wording where appropriate.

The question is addressed at the start of this submission.

Question 33

- a) Do you consider that the proposed Rules 10.1 to 10.5 are broadly the same, in terms of both scope and intent, as current Rules 10.1, 10.2, 10.3, 10.4, and 10.12?**
- b) If you do not consider the proposed rules are broadly the same as the current rules in this area, please explain why and suggest alternative wording where appropriate.**
- c) Do you agree with the introduction of the proposed new Rule 10.6?**
- d) If you do not agree with the proposed new Rule 10.6, please explain why and suggest alternative wording where appropriate.**

Absolute Radio agrees that Rules 10.1 to 10.5 are broadly the same in scope and intent as the current Rules 10.1, 10.2, 10.3, 10.4 and 10.12.

In general terms, as argued earlier in this response, Absolute Radio believes that simplification rather complication is what's needed for a new Section 10.

We are happy to see the introduction of Rule 10.6.

Question 34

a) Do you consider it appropriate to introduce the proposed new meaning of product placement, to reflect the definition required for television?

b) If not please explain why, suggesting drafting changes where appropriate.

Absolute Radio does not believe that it's appropriate to introduce a new meaning for product placement. In radio, the term is irrelevant. Using the AVMS Directive definition to describe something in a media that it does not apply to is confusing and unnecessary.

The definition clearly requires a visual element to any reference – something that is simply impossible in radio terms.

Furthermore, any mention of products or services in programming is adequately covered in other parts of both Ofcom's proposed Section 10 and the industry's proposed Section 10.

References to product placement should be completely excised from any revised Section 10.

Question 35

a) Do you consider it appropriate to introduce the proposed new Rule 10.10?

b) If not please explain why, suggesting drafting changes where appropriate.

Absolute Radio believes that it is appropriate to include the new Rule 10.10.

However, we'd seek a little clarity in the final wording of the rule "...as appropriate." Some additional clarity might be useful in determining how frequently references to basic services such as texting stations where a fee is charged, should be mentioned. We believe that this is currently a grey area not adequately regulated either by PhonepayPlus or Ofcom.

Question 36

- a) Do you consider that the introduction of a new competition and voting section is appropriate?**
- b) Do you agree with the proposed new competition and voting section for Section Ten?**
- c) If you do not agree with our proposed new competition and voting section, please explain why and suggest alternative wording where appropriate.**
- d) Do you agree that it is appropriate to apply these rules to BBC services funded by the licence fee?**
- e) If you do not agree that it is appropriate to apply these rules to BBC services funded by the licence fee, please explain why and suggest drafting changes where appropriate.**

Absolute Radio agrees with the new rules and that these rules should apply to both commercial services and the BBC.

Question 37

a) Do you consider that the rules in relation to programming-related material would benefit from clarification?

b) Do you agree with the introduction of the proposed programming-related material section for Section Ten?

c) If you do not agree with the proposed programming-related material section, please explain why and suggest alternative wording where appropriate.

While Absolute Radio agrees that the rules in relation to programming-related material would benefit from clarification, we are particularly concerned with proposed rule 10.16 which would prevent on-air reference to sponsors of programme-related material.

Were this rule to be enacted, it would seriously limit the potential likelihood of sponsors helping allay the costs of producing such materials. Therefore we believe that this rule is unnecessary and should be removed from Ofcom's proposed Section 10.

Question 38

a) Do you consider that the meanings in relation to sponsorship of radio would benefit from revision?

b) Do you agree that it is appropriate for Ofcom to introduce the proposed meanings in relation to radio sponsorship?

c) If not please explain why, suggesting drafting changes where appropriate.

Absolute Radio believes that the proposed definitions in relation to sponsorship are reasonably clear.

However, unlikely thought it might seem, it's possible that advertiser-funded programming might neither carry a sponsor's credit nor refer in any way to that sponsor. For example, programming might be supplied to a station free-of-charge by an advertiser in return for spot-airtime which might not necessarily even be carried within that programming. As long the programming meets the overall requirements of the code, then it should not be regarded as sponsored programming.

This definition needs amending to only refer to advertiser-funded programming where sponsor credits are included.

Question 39

a) Do you consider that the rules in relation to the content of sponsored output would benefit from clarification?

b) Do you agree with the introduction of the proposed new rules on the content of sponsored output in Section Ten?

c) If you do not agree with the proposed new rules on the content of sponsored output, please explain why and suggest alternative wording where appropriate.

As previously explained, Absolute Radio believes that the existing rules regarding sponsorship unnecessarily limit stations delivering creative solutions to clients.

These rules effectively limit new methods of delivering sponsorship solutions to advertisers while maintaining clear editorial integrity and transparency to listeners.

Absolute Radio fully supports the commercial radio industry's proposed Section 10.

Question 42

a) Do you consider that the proposed rule revisions are appropriate and would remain consistent with current rule requirements?

b) If you not, please explain why and suggest alternative wording where appropriate.

Absolute Radio would prefer that Ofcom adopted the industry proposed Section 10.

However, with specific reference to the proposed replacements:

10.37 needs definition surrounding what should be considered as “short”. It wasn’t previously clear in the old 9.9 and is no clearer now.

10.5 needs removing completely irrespective of which Section 10 is adopted.