

## **Responding to the Review of Advertising and Teleshopping issues paper**

### **THE CAMPAIGN FOR PRESS AND BROADCASTING FREEDOM**

The CPBF was established in 1979. It is a leading independent voluntary organisation dealing with questions of freedom, diversity and accountability in the UK media. It is membership based, drawing its support from individuals, trade unions and community based organisations. It has consistently developed policies designed to encourage a more pluralistic media in the UK and to promote accountability, diversity and plurality in public communications. The CPBF has regularly intervened in the public and political debate over the future of broadcasting in the United Kingdom and on issues of advertising and commercial communications.

#### Questions

*Question 1: Do you agree that these proposed regulatory objectives strike an appropriate balance between the duties and other considerations that Ofcom must take account in reviewing advertising regulation? If not, please explain why, and what objectives you would consider more appropriate?*

Ofcom's stated regulatory objectives here should include ensuring editorial integrity, identification of advertising, transparency and clear separation between editorial (programme content) and advertising. The regulatory objectives should make specific mention of obligations concerning media literacy. The regulatory objectives, as set out, discount the importance of issues of cultural quality and editorial integrity allowing these issues to be largely ignored in the regulatory impact assessment, especially in assessing the impact on viewers.

The Communications Act Section 321 grants Ofcom powers including 'provision prohibiting advertisements and forms and methods of advertising or sponsorship (whether generally or in particular)'. This should have been set out more clearly and fully in the summary, especially since they demonstrate that the Communications Act did not simply endorse a mission to deregulate in the manner described.

*Question 2: Do stakeholders agree that the new Code should discontinue detailed genre-specific rules on natural breaks?*

Genre-specific breaks are important and some, if not all, should be retained. The restrictions on religious programmes and Royal ceremonies appear outdated and no longer justified. However, any relaxation of rules regarding these two programme types should be monitored and viewers should be actively invited and assisted in making comments to help in gauging viewer concerns.

So we argue that genre-specific rules in breaks should be retained. Broadcasters could request (from Ofcom) and log exemptions on a case-by-case basis. This would provide some flexibility in application, while also providing a record of behaviour that is subject to public scrutiny and review.

*Question 3: Do stakeholders agree that the new Code should allow advertising and teleshopping breaks to be signalled in sound or vision or by spatial means, and should drop the requirement for teleshopping segments to be distinguished from programmes by both sound and vision?*

We strongly oppose Ofcom's proposal. Advertising and teleshopping breaks should be signalled by sound and/or vision (preferably both to cater for all viewers and service users). It should not be acceptable to indicate advertising by spatial means alone. In addition, split-screen advertising should be prohibited within programmes. Split screen advertising should only be permitted in end credits and then only for promotions and not for any allied or third-party advertising.

The rules on advertising must maintain the principle that content and advertising should be separated. Separation means more than identification it means that advertising and programme content should not be integrated in any manner. Split-screen advertising would breach this principal and would allow commercial communications to blur with programme content. Split screen should not be allowed in programmes. The principle of clear separation between programmes and advertising should be maintained.

Permitting spatial identification and so allowing advertising to run alongside programming would represent a very significant shift in television services. Such integration is present on the web and in interactive audiovisual services but has been strongly prohibited in linear television. This has been done to safeguard and support a variety of values from editorial integrity, creative integrity and autonomy, the protection and promotion of media literacy, to concerns to avoid the over-commercialisation of television content and services.

There are powerful commercial and market pressures to allow such integration into linear television but this would undermine the integrity of the medium and the quality of communications and so would be socially and culturally detrimental.

Identification of teleshopping segments should be maintained in both sound and vision. These are still unfamiliar formats to most viewers in the UK. Consequently, there is a strong case to ensure effective identification occurs rather than allow any reduction in the means to alert viewers to such commercial communications.

*Question 4: Do stakeholders agree that the new Code should discontinue the requirement for a buffer between advertising and coverage of a religious service or Royal occasion?*

Yes, we support the removal of these requirements. However, there does need to be a mechanism to alert viewers of the change and enable and assist viewers to express their view and feed into a review of the effects of relaxing the rule.

*Question 5: Do stakeholders agree that the rule requiring a 20-minute interval between advertising breaks should be scrapped?*

No. Advertising on commercial PSB channels should be restricted to seven minutes per hour (average eight hours in peak-time) as the current maximum allows. The

current restrictions on advertising breaks should be maintained. The proposal to relax the 20 mins interval is justified on the basis of ‘problems’ that arise because of permitting increased advertising minutage. Commercial PSB channels should not be allowed to schedule four advertising breaks in a given hour of scheduled programming. This would mean that a programme such as *Lost* shown on Channel Four would have two breaks not three and so the 20mins rule could be accommodated.

The 20mins rule safeguards the viewer experience by preventing advertising interruptions. Relaxing this rule, as Ofcom proposes, would mean that peak hour programming on commercial channels and commercial PSBs would comprise programme segments of around 12 mins, the norm on commercial channels in the US and the maximum permitted under the Audio Visual Media Services Directive. There is strong evidence that UK viewers strongly oppose such levels which would be detrimental to the enjoyment of programmes. It would also be detrimental to domestic programme production if programmes were made to hook and retain viewers with shorter (12mins) programme segments instead of longer segments of 20mins.

*Question 6: Do stakeholders agree that there should be limits on the number of advertising breaks within programmes of a given scheduled duration?*

Yes. It is very important that the limits are retained on the number of advertising breaks within programmes, including according to scheduled duration.

*Question 7: Has Ofcom identified the right options for break frequencies? What issues should Ofcom take into account in formulating proposals for consultation?*

*Question 8: Do stakeholders agree that the restrictions on advertising in films, documentaries and religious programmes and children’s programming should be relaxed to the extent permitted by the AVMS Directive?*

No. The restrictions on breaks in feature films strike the right balance in allowing advertising while safeguarding viewers’ experience and minimising the impact on necessary interruption by commercials. The case for deregulating advertising rules regarding children’s programmes is not made. There should be no relaxation of the rule prohibiting advertising within children’s programme of less than 30 minutes duration.

There should be no relaxation of rules for news or current affair programmes. At issue here is not only impact of advertising interruption but the potential impact on programme decisions and on the nature of programmes produced. Current affairs is a broad and increasingly elastic programme category. If broadcasters are permitted to realise more advertising associated with such programmes they may be expected to favour more dramatised entertainment and infotainment type programmes. This would act, in turn, as a disincentive for more serious kinds of programming. The incentives for current affairs programmes are better established through the maintenance and direct pursuit of PSB requirements than through any such efforts to permit more commercial communications through advertising breaks. It is far from demonstrated that quality programming will be best protected by allowing a further extensions of advertising within and between such programmes. Instead of this market driven model

and assumptions, Ofcom needs to meet its responsibilities by maintaining a stronger framework of PSB requirements and incentives.

Question 9: *Do stakeholders agree that changes to the rules on advertising breaks in news and children's programmes that must be made to secure compliance with the AVMS Directive should be deferred until December 2009?*

No, the stricter restrictions of the AVMS Directive should be introduced before December 2009.

Question 10: *Do stakeholders agree that:*

*1. the Code should make clear that advertisements are permitted between schools programmes?*

*2. the requirement for a buffer between coverage of a religious service or Royal occasion and advertising should be discontinued?*

*3. the rule prohibiting advertising after an epilogue should be discontinued? and*

*4. the rule allowing Ofcom to exclude adverts from specified programmes should be discontinued?*

10 (1) There should be no advertising permitted between schools programmes. There are good reasons to preclude advertising from breaks between schools programmes. These are that commercial communications should not occur as part of formal education where the emphasis is on the educative nature and value of programmes. There should not be a market permitted that would allow advertisers to seek to gain presence in the classroom where such programmes are viewed. The lessons of Channel One in the US are instructive here and there is mounting opposition there to this effort to reach a 'captive' audience with commercial communications. Relaxation of the rules governing advertising around schools programmes is unacceptable. There needs to be very extensive consultation with relevant education bodies and stakeholders before any such move should be considered. It is right that parliament not Ofcom decides on such an important matter, especially in the light of growing evidence and concern about the commercialisation of childhood.

10 (2) Yes, this should be discontinued.

10 (3) Yes, this should be discontinued

10 (4) No, Ofcom has powers set out in the Communications Act which allow it to exclude adverts from specified programmes. This capability should be retained.

Question 11: *Do stakeholders agree that the rules limiting the length of individual advertisements on PSB channels should be discontinued?*

No.

Question 12: *Do stakeholders agree that the new Code should discontinue rules on the length of breaks on PSB channels?*

No.

Question 13: *Do stakeholders agree that the draft Code should establish the principle that the distinction between advertising and editorial content must be readily recognisable, and set out the means for doing this, but avoid more prescriptive rules?*

No, the new code should do both. There is a need for clear and prescriptive rules as well as ongoing monitoring and enforcement by Ofcom (and the ASA) to ensure that the distinction between advertising and editorial content is both 'readily recognisable' and that there is clear separation between these communications.

Question 14: *Do stakeholders agree that the current arrangements for transferring unused minutage should remain in place, and be applied to Channel 4 in place of the special arrangements in respect of schools programmes?*

No. There should be no advertising between designated schools programmes. Special arrangements should continue since these provide a much more appropriate means of rewarding/ incentivising Channel 4 and serve citizens' interest better than promotion of commercialism in formal educational settings.

Question 15: *What views do stakeholders have on the possible approaches to advertising minutage regulation outlined above?*

We would favour the option of 'levelling down' although we would prefer to describe this as levelling up public service values across television services. We strongly oppose any increase in the advertising minutage for public service channels. As Ofcom shows the commercial PSBs are already near the maximum permitted ceiling in peak time and this should be reduced to a maximum of 8 minutes in any one hour of peak time, rather than an average across peak time hours that allows broadcasters to show up to 12 minutes of advertising per hour.

Question 16: *What views do stakeholders have on the teleshopping options and preliminary assessment outlined above in relation to non-PSB channels?*

Question 17: *What views do stakeholders have on the teleshopping options and preliminary assessment outlined above in relation to PSB channels?*

There should be no gambling programmes on PSB channels. Such services should be permitted on commercial services only, including services by companies operating PSB channels but in such cases there should be strict rules restricting channel cross-promotion.

Option 1 should be maintained.

Ofcom's proposals would serve to move UK broadcasting rapidly towards that of the United States where commercial interests and values have dominated since the 1940s and where, revealingly, there is negligible regulation governing broadcast advertising.

## Additional comments

The role for regulation is to ensure that the interests of consumers and more broadly citizens and the public interest are safeguarded. In broadcasting, we believe the values that should inform regulation are to ensure quality new, information, entertainment and diversity for the public and that all broadcasting should be underpinned by values of public service. Like other industries there are powerful interests and incentives shaping the behaviour of producers which would result in detriment to the public interest without the intervention of regulation. Ofcom favours greater self-regulation of advertising scheduling and minutage by broadcasters. The argument that 'self-regulation' will work is not proven. In fact, as Ofcom acknowledges, there are strong reasons, and available evidence, to show that this outcome is by no means guaranteed.

It is argued that consumers ensure built in restraint on undue clutter as there are disincentives for advertisers (decreased advertising effectiveness; increased aversion etc) and broadcasters (decreased audience share and reach). However, this argument is based on the ability of consumer to register their discontent in ways that affect and alter the behaviour of suppliers. However, FTA commercial broadcasting is a dual product market supplying advertisers as well as audiences. Once consequence of this is that it is far from guaranteed that consumer preferences will have a commanding role in shaping the supply of advertising. Consumer preferences would be influential if there was such substitutability that viewers could switch to other suppliers. However, as the RIA notes, there are complicating factors and the substitutability of cultural products does not follow the patterns of more standardised goods. Familiar soaps and popular programmes, feature films, live sports, premium content, original programming, local programming all serve to limit substitutability.

The other means for viewers to register dissatisfaction is through complaints mechanisms and through regulators. This, however, still takes some effort and so the level of complaints is likely to be small. Ofcom's survey research confirms that there is considerable opposition to increases in advertising minutage and programme interruptions. As the report also shows, when there is substitutability, such as for some live football games, viewers tend to choose the BBC programme with no advertising over commercial PSBs. The best means to serve viewers interests is to retain clear rules with monitoring and enforcement by Ofcom (and the ASA). Television channels supported by advertising have been an important part of a broadcasting ecology where the whole system is seen as a public service. In order to retain quality, trust and public service values we believe it is vital that recommendations such as those we have made to limit the amount of advertising and safeguard editorial and programme integrity are implemented.

## About the consultation

This is a disappointing and in places highly partisan consultation document which fails to set out issues in a balanced way or provide detailed evidence and argument to support proposals made. The RIA is detailed and valuable but it deals very poorly with values that are not acknowledged in its economic calculations and it offers a brief, at times biased and complacent, account of 'impacts' on viewers that is not supported by any evidence.

The justification for deregulation is poorly argued and supported in many instances. It is of real concern that justifications for deregulation are accompanied by assertions that seek to reassure readers that the effects will be minimal. For instance, Ofcom argues that the rule whereby broadcasters should make clear that advertisements longer than one minute are adverts should be removed. Ofcom argues that the effect of this change will be minimal. However the effect of this change will be to permit promotional messages not to be identified as such. There is no acknowledgement of media literacy issues in this argument nor any explicit linkage made with such responsibilities on Ofcom. As the consultation paper notes internet services such as *YouTube* have provided opportunities for longer ads to be shown, such as the Honda ad mentioned. With a migration of advertising expenditure to the internet and increased competition facing TV broadcasters, such 'long' ads may be expected to increase, especially following such a relaxation of the rules as Ofcom intends, Yet readers of the consultation are provided with a reassurance, although no evidential support, that the relaxation of the rule will have no significant, discernible effect. Such a transparently biased and poorly defended proposal is a matter of great concern.

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