

**OFCOM PARTICIPATION TV:
PROTECTING VIEWERS AND CONSUMERS,
AND KEEPING ADVERTISING SEPARATE FROM EDITORIAL**

Closing Date: 12 p.m. 17th October 2007

Introduction

This document sets out *Ostrich Media's* views and comments on the pre-consultation issues paper entitled "Participation TV: how should it be regulated?" published by Ofcom on 24th July 2007 (the "**Issues Paper**").

Ostrich Media is the UK's leading independent producer of quiz TV programming, primarily under the '*Quiz Call*' brand. Launched in August 2005 on its own dedicated channel and as programming for other broadcasters, *Quiz Call* was one of the first quiz TV channels in the UK.

Quiz Call now broadcasts on Five three nights a week, and although Five are the licence holder, this issues paper also impacts on *Ostrich Media*.

As the producers of *Quiz Call*, *Ostrich Media* welcomes the opportunity to take part in a constructive debate about the nature of Participation TV and how it should be regulated.

Ostrich Media seeks to operate to the highest standards in every area of its business and it has always endeavoured to work, and will continue to work, with Ofcom and ICSTIS to ensure it meets the terms of those regulations that apply to it. In addition *Ostrich Media* has sought to apply such other industry standards as are generally accepted as best practice within the quiz TV industry.

At *Ostrich Media*, we believe our high level of satisfied customers demonstrates that consumers both want and understand quiz TV services and that all such services can be delivered in a fair and appropriate way.

Our views and comments below are ordered under the headings identified in the Issues Paper.

Q1. Do you agree that television broadcasters should be directly responsible for PRS in programmes and also for other forms of communication where viewers seek to interact with programmes? Please explain why.

Ostrich Media agree that television broadcasters should be responsible for PRS in programmes and also for other forms of communication where viewers seek to interact with programmes, such as phone-ins and phone-voting.

This would mean that all aspects of PRS services would have to be covered under the umbrella of the broadcaster's licence. It must be the complete and overall responsibility of the broadcaster to ensure that all areas of PRS are under their control, for they are, after all, delivering the programme to the viewers' living rooms.

This autonomy would have to cover every component from the fairness of a competitions question, the presenter's on-screen behaviour and delivery of pricing information to meeting the requirements of running IVR telephony services, SMS entry, free web entry and any other services from the involved production companies and service providers.

This chain of suppliers should answer to one 'parent' and this should be the licence holding broadcaster.

Broadcasters would no longer be able to pass the buck to service providers as happened in the Richard and Judy/Eckoh case, instead the broadcaster would have to take responsibility for their actions and be in control of all facets of the content they are beaming into people's homes. We believe that if the buck stops with the broadcaster, this would, in turn, bring a more rigid control over the process as a whole and would demonstrate to the viewing public that their rights as viewers and consumers are safeguarded and better protected thus the lacking element of trust (brought about mistakes made by operators other than *Ostrich Media*) could return to the industry.

Q2. If so, do you agree that a variation to television licences would be the most appropriate way of ensuring that broadcasters are responsible for such PRS compliance?

Ostrich Media believe that a variation to television licences would be the most appropriate way of ensuring that broadcasters are responsible for PRS at every level as it is the only way to ensure that broadcasters, production companies and service providers are fully compliant.

When a broadcast licence details rules and regulations needed in order to successfully run a PRS competition, gambling, vote or phone-in, then broadcasters will have to sit up and take notice of this.

If a television station's position as licence holder is under threat then they will ensure that PRS services are run correctly.

Q3. Do you agree that there is a need for broadcasters to obtain independent, third party verification that they are in fact complying with the draft licence obligations set out in Paragraph 2 of the draft licence variation? If so, which of the options for verification discussed in Section 4 do you think is most appropriate? Are there other appropriate options? Again, please provide reasons.

Ostrich Media has been independently audited for all aspects of our business and processes three times since our inception in 2005. Under the ownership of Channel Four Television we have been externally audited twice by KMPG and once by Deloitte while broadcasting on Five. The results of these audits have demonstrated that *Ostrich Media* is fully compliant in all its systems, processes and procedures.

Furthermore Five carry out their own audits of *Ostrich Media* and in addition to this, *Ostrich Media* has its own, internal compliance department who oversee every aspect

of compliance from the fairness of each competition question to regular compliance training and weekly viewings of recent shows.

Ostrich Media believes it is already compliant with the policies as set out in paragraph 2 of the draft licence variation and would therefore be more than happy, as part of a wider audit of the licence holder, for auditors to investigate all our behaviour and processes on a sensible regular basis. We echo Ofcom's suggestion that this might happen once per year, and at the expense of the licence holder.

Ostrich Media would be happy with any of the three options proposed by Ofcom, yet believe this part of the consultation would be more adequately answered by the licence holders.

Q4. Do you have any comments on the draft licence variation set out in Annex 5? Please support your comments with adequate explanation and provide drafting proposals as appropriate.

No comment.

Q5. Do you agree that the draft licence obligations should not be limited to television but should also apply to radio broadcasters? Please provide reasons.

Ostrich Media believe that Competitions involving premium rate telephone numbers (or SMS) on radio should be regulated in the same way as television because consumer protection is just as important for radio as it is for television. If there are licence rules change for television then surely the same must be applied to radio.

Q6. Which of the options proposed in Section 6 do you believe is most appropriate to ensure separation of advertising from editorial content? Please explain why.

Ostrich Media believe that **Option 2 "Classed as editorial, subject to new rules"** is the best way to provide more robust consumer protection and offer greater clarity to broadcasters on the separation principal.

The separation principal is without a doubt one of the most important factors in this discussion. Deciding whether a programme or channel is editorial or advertising is key to the outcome of this consultation. The most simple way to tell if a programme or channel is editorial or advertising is whether a caller actually **participates** in the programme.

In this way Quiz TV programmes and dedicated Quiz channels are clearly editorial. The viewer experience includes the fact that successful callers make it through to the studio and actually speak to the presenter live to give their answer. In this way they demonstrably contribute to the content of the programme.

We see it is important that there is a clear distinction between quizzes where the audience forms part of the editorial content and teleshopping channels which sell products or services off-screen. Other genres of dedicated PTV such as psychic and

adult chat services are, much closer to well established teleshopping channels such as *QVC* and *bid tv* and therefore are, by their very nature, clearly not editorial.

Ofcom itself states in paragraph 6.27 that "Under this option, it is arguable that quiz TV entries, the great majority of which do not make it to air, should nevertheless be considered as direct contributions to editorial. The rationale for treating quiz entry in this way would be viewer expectation. Competition-based prize schemes (as opposed to the promotional distribution of gifts, for example) are commonly understood to entail numbers of entrants trying and failing: the contribution to editorial is not decided by each participant but by the framework of the scheme as a whole."

Further to Ofcom's statement that all callers directly contribute to editorial content, we believe that callers who make it to air and give a wrong answer are contributing just as much as a caller with a winning answer. This is because the remaining viewers can then eliminate the wrong answer from the list of possible answers. Our presenters often instruct viewers to write down wrong answers that other callers might give, and this is a large part of the editorial content.

Q7. Do you have any comments on the draft new rules and guidance in respect of Options 2, 3 and 4 set out in Annex 6? Please support your comments with adequate explanation and provide drafting proposals as appropriate.

In paragraph 6.25 Ofcom states that "It is important to remember that members of the audience are seeking to participate in a programme, not to purchase a product or service. The greater the distance between the method of participation itself and the charging mechanism for that participation, the more likely that the programme will appear to be 'selling' a product or service, rather than simply enabling audiences at home to take part."

These types of channels are advertisers of services which are diverted off-screen and therefore have no interactivity between customer and content. We believe that these types of programming will have to cease broadcasting in their current form or significantly change their business model in order to be classed as editorial programming.

Quiz Call does not promote off-screen services.

Q8. Do you agree that Option 2 clarifies the existing provisions of the Broadcasting Code and therefore should not be limited to dedicated PTV only, but should apply to all editorial content (on both television and radio) which invites viewers to pay to take part? Please give reasons.

Ostrich Media agrees that it is fair and reasonable that Option 2 should be extended to all editorial content which invites viewers to pay to take part because in any programme or service which requires payment, interactivity is tantamount to its classification as editorial.

For instance the winner of a reality TV show such as *X-Factor*, *I'm a Celebrity...* or *Big Brother* is clearly chosen by the participating callers. This also extends to phone-ins such as ITV's new football programme *Champions Tuesday Extra* which features premium rate telephony¹ in which some (but not all) viewers have a chance of

forming part of the content of the programme.

Competitions involving premium rate telephone numbers (or SMS) on radio should be regulated in the same way as television because consumer protection is just as important as for television.

Q9. Has Ofcom correctly identified, in Section 6 and the Impact Assessment in Annex 7, the various impacts arising from each option for dedicated PTV? Again, please give reasons.

Ostrich Media believe that Ofcom has correctly identified the impacts arising from each option for dedicated PTV. The four options presented comprise the right amount of change and Ofcom argue the benefits and disadvantages of each option well. These changes will impact upon broadcasters, production companies, network operators and service providers, with the broadcaster taking overall responsibility for its contractor's behaviour.

However, as stated above, we believe that there are two distinct forms of PTV: those whereby the viewers interact with the programme, either through voting, answering questions or speaking on-air and therefore *influence* the programme's content, and those that do not. We believe it is important to stress the difference between these two very different genres of PTV. We believe it is of equal importance that Ofcom recognises this also.

Option 2 offers the best chance of greater certainty by the broadcasters and trust by the viewers, but only if the kind of programming offered by Ostrich Media is not lumped together with the Psychic and Babe TV forms of advertisement selling off-screen services.

In terms of financial impacts also believe that as the 'parent' taking responsibility for all aspects of its programme, that the broadcaster should be liable for the costs of the suggested auditing.

¹<http://www.itv.com/Termsandconditions/Competitionsandvotes/ChampionsTuesdayExtraCommentsLine/default.html>