

Sanction: Decision by Ofcom

Sanction: to be imposed on Trace UK World Ltd

For material broadcast on Starz on 11 March 2018 at 14:30¹.

Ofcom’s Sanction Decision against: Trace UK World Ltd (“Trace” or “the Licensee”) in respect of its service **Starz** (Ofcom TLCS licence TLCS001648BA/4).

For: Breaches at the time the licence for Starz was held by CSC Media Group Limited (“CSC”)² of the BCAP Code: The UK Code of Broadcast Advertising (“the BCAP Code”) in respect of:

Rule 1.2: “Advertisements must be prepared with a sense of responsibility to the audience and to society”.

Rule 4.2: “Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards”.

Rule 4.8: “Advertisements must not condone or encourage harmful discriminatory behaviour or treatment. Advertisements must not prejudice respect for human dignity”.

Decision: To direct the Licensee to broadcast a statement of Ofcom’s findings on a date and in a form to be determined by Ofcom.

¹ As detailed in [Broadcast and On Demand Bulletin 363](https://www.ofcom.org.uk/__data/assets/pdf_file/0020/122960/issue-363-broadcast-on-demand-bulletin.pdf) (https://www.ofcom.org.uk/__data/assets/pdf_file/0020/122960/issue-363-broadcast-on-demand-bulletin.pdf), 8 October 2018 (“the Breach Decision”).

² CSC, a subsidiary of Columbia Pictures Corporation Ltd (“Columbia Pictures”) held the licence for Starz until 1 April 2018, at which time, following approval by Ofcom, the licence was transferred to Colombia Pictures. The latter held the licence until 14 December 2018, when following approval by Ofcom, the licence for Starz was transferred to Trace, the current licensee.

Executive Summary

1. Starz is a UK satellite television channel which broadcasts music videos alongside texts and photographs submitted by viewers. At the time of broadcast i.e. 11 March 2018, the licence for Starz was held by CSC Media Group Limited (“CSC”), which is a subsidiary of Columbia Pictures Corporation Ltd (“Columbia Pictures”) (part of the Sony Pictures Entertainment Group). The licence was then held by Columbia Pictures from 1 April to 14 December 2018. On that date, following approval by Ofcom, the licence for Starz was transferred to Trace.
2. On 11 March 2018 at 14:30 Starz broadcast an image submitted by a viewer alongside a music video. It depicted a cartoon caricature of a Jewish person which conformed to racist stereotypes. In Ofcom’s view, the image, which could be found on various neo-Nazi websites, was likely to have been interpreted by viewers as being highly offensive and antisemitic. Over the next 51 minutes, the image was repeatedly reshown in rotation with photographs submitted by other viewers.

The Breach Decision

3. In Ofcom’s Decision (“the Breach Decision”) published on 8 October 2018 in issue 363 of the Broadcast and On Demand Bulletin³, Ofcom’s Executive found that the material in the Programme breached Rules 1.2, 4.2 and 4.8 of the UK Code of Broadcast Advertising (the “BCAP Code”)⁴. Columbia Pictures was the licensee at the time of publication of the Breach Decision.
4. The Breach Decision set out the broadcast material that was in breach, along with reasoning as to why the material had breached each rule.
5. Ofcom put Columbia Pictures on notice in the Breach Decision that it considered these breaches to be serious, and that it would consider them for the imposition of a statutory sanction.

The Sanction Decision

6. In accordance with Ofcom’s Procedures for the consideration of statutory sanctions in breaches of broadcast licences (“the Sanctions Procedures”)⁵, Ofcom considered whether the BCAP Code breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on Columbia Pictures. It has reached the Decision that a sanction is merited in this case since the breaches are serious for the reasons set out in paragraphs 38 to 49 below.
7. This paper sets out Ofcom’s Decision on the type and level of sanction to be imposed on the Licensee, taking into account all the relevant material in this case and Ofcom’s Penalty Guidelines (“the Penalty Guidelines”)⁶.
8. Ofcom’s Decision is that the Licensee should be directed to broadcast a statement of Ofcom’s findings on a date and in a form to be determined by Ofcom.

³ See footnote 1.

⁴ [The BCAP Code, The UK Code of Broadcast Advertising](https://www.asa.org.uk/uploads/assets/uploaded/526914b7-de7f-4cf6-86afe08684d22885.pdf) (https://www.asa.org.uk/uploads/assets/uploaded/526914b7-de7f-4cf6-86afe08684d22885.pdf)

⁵ See: [Procedures for the consideration of statutory sanctions in breaches of broadcast licences](https://www.ofcom.org.uk/__data/assets/pdf_file/0030/71967/Procedures_for_consideration.pdf) (https://www.ofcom.org.uk/__data/assets/pdf_file/0030/71967/Procedures_for_consideration.pdf).

⁶ See: [the Penalty Guidelines](https://www.ofcom.org.uk/about-ofcom/policies-and-guidelines/penalty-guidelines) (https://www.ofcom.org.uk/about-ofcom/policies-and-guidelines/penalty-guidelines).

Legal Framework

Communications Act 2003

9. Ofcom's principal duty, set out in Section 3(1) of the Communications Act 2003 ("the Act"), is to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets. In carrying out its functions, Ofcom is required to secure a number of other matters. These include the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services (section 3(2)(e)).
10. Ofcom has a specific duty under section 319 of the Act to set such standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives set out in section 319(2). These objectives include that that "the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented" (section 319(2)(h)). This requirement is reflected broadly in Section One, and specifically in Section Four, of the BCAP Code.
11. In performing its duties, Ofcom is required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles representing best regulatory practice (section 3(3)); and, where relevant, to have regard to a number of other considerations including the need to secure that the application in the case of television and radio services of standards relating to harm and offence is in the manner that best guarantees an appropriate level of freedom of expression (section 3(4)(g)).

Human Rights Act 1998

12. Under section 6 of the Human Rights Act 1998, Ofcom (as a public authority) has a duty to ensure that it does not act in a way which is incompatible with the European Convention on Human Rights ("the Convention"). In particular, in the context of this case, Ofcom has taken account of the related rights under Article 9 and Article 10 of the convention.
13. Article 9 of the Convention provides for the right to freedom of thought, conscience and religion. This Article makes clear that freedom to "manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the protection of public order, health or morals, or for the protection of rights and freedoms of others".
14. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster's freedom to impart and the audience's freedom to receive information and ideas without interference by public authority and regardless of frontiers (Article 10(1)). The exercise of these freedoms may be subject only to conditions and restrictions which are "prescribed in law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or maintaining the authority and impartiality of the judiciary" (Article 10(2)).
15. Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

Equality Act 2010

16. Under Section 149 of the Equality Act 2010, in the exercise of its functions, Ofcom must also have due regard to the need to eliminate unlawful discrimination, to advance equality of

opportunity and to foster good relations between persons who share a relevant protected characteristic, such as race or religion, and persons who do not share it.

The UK Code of Broadcast Advertising

17. Standards set by Ofcom in accordance with section 319(2)(h) of the Act relating to advertising are set out in the BCAP Code. The BCAP Code is drawn up and published by the Broadcast Committee of Advertising Practice Limited (“BCAP”) and enforced by the Advertising Standards Authority (Broadcast) Limited (ASA(B)), pursuant to contracting out arrangements entered into between Ofcom and these bodies⁷.
18. However, Ofcom remains responsible for enforcing the rules for certain types of advertising, including long-form Participation TV advertising⁸. Although Starz is an editorial service, the text and photo elements of the channel are classified as ‘Participation TV’ by Ofcom because these elements are predicated on the use of premium rate telephony services – the channel invites viewers to pay to contact it with a view to selecting videos and/or getting their messages and photographs on screen.
19. The relevant BCAP Code rules in this case are set out in full at the beginning of this Decision.

Remedial action and penalties

20. Under section 325 of the Act, a licence for a programme service issued by Ofcom under the Broadcasting Act 1990 or 1996 must include conditions for securing that the standards set under section 319 are observed by the licensee. In the case of a television licensable content service (“TLCS”) licence, Condition 6 of the licence requires the licensee to ensure that the provisions of any Code made under section 319 are complied with. The Licensee holds a TLCS licence.
21. Where Ofcom has identified that a condition of a TLCS licence has been contravened, its powers to take action are set out in sections 236 to 238 of the Act insofar as relevant to the case.
22. Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or a statement of Ofcom’s findings (or both), or not to repeat a programme which was in contravention of a licence condition.
23. Section 237 of the Act provides Ofcom with the power to impose a financial penalty on the holder of a TLCS licence. The maximum penalty which may be imposed in respect of each contravention of a licence condition is whichever is the greater of £250,000 and five per cent of the qualifying revenue from the licensed service for the licensee’s last complete accounting period falling within the period for which its licence has been in force.
24. Section 238 of the Act provides Ofcom with the power to revoke a TLCS licence where a licensee is in contravention of a condition of a TLCS licence or direction thereunder.

Background – The Breach Decision

25. In the Breach Decision, Ofcom’s Executive found that material broadcast on Starz breached Rules 1.2, 4.2 and 4.8 of the BCAP Code. The Breach Decision set out the reasons for each of these breach findings.

⁷ Further details of the contracting out arrangements are contained in [the Memorandum of Understanding between Ofcom and the ASA and BCAP and BASBOF](http://stakeholders.ofcom.org.uk/binaries/consultations/reg_broad_ad/statement/mou.pdf) (published May 2004) which can be found at: http://stakeholders.ofcom.org.uk/binaries/consultations/reg_broad_ad/statement/mou.pdf.

⁸ Participation TV is defined as “long form television advertising for direct response, remote entertainment services that typically include the possibility of interacting with the broadcast content”. See paragraph (n) of the introduction to the BCAP Code. Examples of Participation TV include on-screen quizzes, chats and message boards.

26. The Breach Decision noted that on 11 March 2018 at 14:30 an image submitted by a viewer was shown, which depicted a cartoon caricature of a Jewish person which conformed to racist stereotypes; wearing what appeared to be a prayer shawl (or “tallit”) which was decorated with a blue Star of David and blue and white stripes. The man was caricatured as having a large hooked nose and drooping eyelids. Set against a backdrop of gold coins, he was smiling widely and had his hands flat against his cheeks framing his open mouth. This image was shown 22 times from 14:30 to 15:21 (51 minutes) for brief periods of 10 to 30 seconds at a time, in rotation with photographs submitted by other viewers. These were personal photographs of adults, children and pets. In total the image was shown for 7 minutes and 5 seconds.
27. At 15:45 Starz broadcast an apology in the form of an on-screen text message which read “*STZ sorry if any pics or messages caused offence guys!*”. This scrolled down the screen for 2 minutes and 50 seconds.
28. In coming to our Decision, Ofcom had regard to the International Holocaust Remembrance Alliance’s (“IHRA”) working definition⁹ of antisemitism which states:

“Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities”.
29. The guidance published with the IHRA’s working definition of antisemitism includes the following as a contemporary example (amongst others) of what could constitute antisemitism in public life and the media, taking into account the overall context:

“Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions”.
30. It was our view that the image in this case was, and was likely to have been interpreted by viewers as being, a highly offensive and antisemitic caricature and as such it constituted a form of hate speech¹⁰. We took into account that this image could be found on various neo-Nazi websites.
31. We accepted that neither CSC nor Columbia Pictures intended to broadcast hate speech but did not consider this relevant to the question of whether the content itself constituted hate speech.
32. We considered that the image was clearly visible to viewers and its intermittent broadcast over a period of almost an hour was discriminatory and offensive treatment of Jewish people.
33. Rule 1.2 of the BCAP Code states that advertisements must be prepared with a sense of responsibility to the audience and to society. For the reasons set out above, Ofcom considered that the advertisement had not been prepared with a sense of responsibility to the audience and to society.
34. Rule 4.2 states that advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards. For the reasons set out above, Ofcom considered that the image had the potential to cause serious and widespread offence and

⁹ In December 2016, the UK Government agreed to adopt the [International Holocaust Remembrance Alliance’s working definition of antisemitism](https://www.holocaustremembrance.com/sites/default/files/press_release_document_antisemitism.pdf)

(https://www.holocaustremembrance.com/sites/default/files/press_release_document_antisemitism.pdf).

¹⁰ Ofcom has defined “hate speech” in Section Three of the Broadcasting Code as “all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation”.

presented a derogatory stereotype of Jewish people against generally accepted moral, social and cultural standards.

35. Rule 4.8 of the BCAP Code states that advertisements must not condone or encourage harmful discriminatory behaviour or treatment. Advertisements must not prejudice respect for human dignity.
36. As set out above, Ofcom considered that the image presented a negative stereotype of Jewish people and thereby condoned and encouraged harmful or discriminatory behaviour. Further, the image can be found on various neo-Nazi websites. We considered this indicated it has been intentionally used to promote a harmful message in other situations and therefore would be capable of encouraging harmful behaviour. In particular, we considered the fact that it was broadcast intermittently 22 times over a period of almost an hour made it particularly likely to be interpreted as condoning and encouraging hatred against Jewish people, even though Columbia Pictures said this was not its intention. In addition, for the reasons already given, we considered that the image was prejudicial to respect for human dignity.
37. Ofcom stated in the Breach Decision that the contraventions of Rules 1.2, 4.2 and 4.8 the Code were serious and therefore would be considered for the imposition of a statutory sanction.

Ofcom's Decision to Impose a Statutory Sanction

38. During the investigation of the breaches in this case, Columbia Pictures made written and oral representations to Ofcom as to why the breaches did not warrant the imposition of a statutory sanction. It said that there was "absolutely no intent on the part of the broadcaster to cause or create hate speech or hatred in any way". It added that the "compliance structure of the channel...has been constructed specifically to avoid broadcasting any harmful or offensive material...".
39. Columbia Pictures said that in this case "the moderator unfortunately did not recognise the image as offensive [and although] he was unsure of what the image was he did not escalate it in accordance with our compliance procedures"¹¹. It described this as a "very, very big error". It added that the moderator did not recognise the "historical implications" of the image as many of its moderators were "under 30".
40. Upon discovery, the image was removed, an apology was published on screen and there was "swift senior management review into what happened, and consequent compliance improvements"¹².
41. Columbia Pictures said the image contained no text and there were no "additional comments" surrounding the image or any other response to the image onscreen. The connotation of the image would "require close inspection to fully understand its meaning (given the image took up 4.49% of the screen at the bottom corner of the screen)".
42. We accepted that the broadcast of this content was not deliberate. However, in our view, the breach was still serious.
43. We identified weaknesses in the compliance structure and compliance training at Starz: In our view, CSC/Columbia Picture's compliance process appeared to rely heavily on the judgement of a single moderator who was assessing a large number of images and text messages a day,

¹¹ Columbia Pictures said that it had undertaken an appropriate disciplinary process.

¹² The Decision sets out in full the steps taken by Columbia Pictures to improve its compliance, which included: a Senior Compliance Manager and the Channel Manager reviewing all processes to make sure all staff were "fully aware of the compliance requirements" and an updating of its compliance documentation to be more accessible and user-friendly for moderators.

without sufficiently accessible compliance documentation and without sufficient experience and training. The images and text messages were contributed, and often created, by viewers. In our view, therefore, there was a higher risk of this content containing offensive material¹³ and a correspondingly greater need for strong compliance processes.

44. We noted the remedial action by CSC/Columbia Pictures upon discovery of the breach. In summary, following a complaint from a viewer alerting it to the content, an apology in the form of an on-screen text message was broadcast at 15:45 which read: *“STZ sorry if any pics or messages caused offence guys!”*. This was 1 hour and 15 minutes after the first broadcast of the image and about 25 minutes after it had last broadcast the image (at 15:21). This apology scrolled down the screen for 2 minutes and 50 seconds. However, in Ofcom’s view, given that an instance of hate speech had been broadcast over a sustained period, we did not consider that the nature of this apology, and its timing, was sufficient to mitigate the seriousness of the breaches in this case. We considered the apology provided very limited information to viewers; in particular it did not specify the content which may have caused offence. Ofcom also considered that it was likely that viewers would have interpreted the apology as indicating that the broadcast of the content was regarded as a minor matter.
45. Columbia Pictures said that the image would require close inspection to fully understand its meaning. However, Ofcom considered that the image was clearly visible to viewers and that its stereotypical imagery, together with the apparent depiction of a tallit and Star of David, would have been readily identifiable to viewers as being antisemitic and a form of hate speech. We considered this broadcast was likely to have made Jewish people fearful, as well as causing them distress and humiliation¹⁴.
46. Columbia Pictures also argued that there was “no editorial support or amplification of the image” in terms of commissioning or promoting the image. However, we considered that, albeit unintentionally, CSC gave indirect “support” to the image by allowing it to appear on Starz 22 times in its broadcast over a period of 51 minutes. Further, we disagreed with Columbia Pictures’ argument that it was a “reasonable assumption that viewers’ likely expectations are to perceive any image appearing in the corner of the screen as a temporary viewer-submitted image with very limited editorial weight on the part of the broadcaster”. It is fundamental to the system of broadcast regulation in this country that a licensee remains editorially responsible for everything that appears on-screen.

¹³ This risk can be seen for example in the results of the latest report by the EU Fundamental Rights Agency of December 2018: [“Experiences and perceptions of antisemitism/Second survey on discrimination and hate crime against Jews in the EU”](https://fra.europa.eu/en/publication/2018/2nd-survey-discrimination-hate-crime-against-jews) (https://fra.europa.eu/en/publication/2018/2nd-survey-discrimination-hate-crime-against-jews). On page 22, this states that 84% of UK respondents regard manifestations of antisemitism on the internet, including social media as a problem. This figure drops to 61% for antisemitism in the media.

¹⁴ This can be seen in the responses to the latest survey by the EU Fundamental Rights Agency quoted on page 23 of its December 2018 report [“Experiences and perceptions of antisemitism/Second survey on discrimination and hate crime against Jews in the EU”](https://fra.europa.eu/en/publication/2018/2nd-survey-discrimination-hate-crime-against-jews) (https://fra.europa.eu/en/publication/2018/2nd-survey-discrimination-hate-crime-against-jews): “The survey asks if I have personally been a victim of antisemitism, which I have not, but I feel it’s important to add that I have a strong feeling of unease at the moment regarding the level of antisemitism in the media and online which makes me feel unsafe” (Woman, 40–44 years old, the United Kingdom); and, “Some forms of antisemitism (especially in social media) have become so commonplace that they are almost accepted. These are the sort of things that you can’t report to the police or even to the media platform, but strengthen a hostile culture. For example, references to Jewish bankers, Rothschild cults, etc etc.” (Man, 40–44 years old, the United Kingdom).

47. Having considered each of Columbia Pictures' representations, we were not persuaded that there were mitigating factors sufficient to diminish the potential seriousness in this case to such a degree that considering a sanction would not be appropriate.
48. We also took into account that this was CSC's first breach of either the Broadcasting Code or the BCAP Code involving hate speech. In principle, Ofcom may, and has, imposed statutory sanctions on licensees for a first breach in the area of hate speech¹⁵, including in cases where the broadcast of the material was the result of a compliance failure. See, for example, our decisions in relation to Kanshi Radio Limited and Iman FM Limited¹⁶.
49. In view of the factors set out above, Ofcom's Decision is that the breaches on Starz were serious and so warrant the imposition of a statutory sanction. We also considered that this was in accordance with our Sanctions Procedures.

The licensee's representations on the appropriate sanction

50. Trace acquired the licence for Starz from CSC in December 2018. Trace was therefore the licensee for Starz at the time when Ofcom was preparing its Preliminary View on the appropriate sanction to impose in this case. Trace provided the following representations on Ofcom's Preliminary View.
51. Although it did not hold the licence for the Starz service at the time of the breaches in this case, Trace did not dispute that breaches of the BCAP Code had occurred. It added that it agreed with Ofcom's Preliminary View, which was to direct the Licensee to broadcast a statement of our findings on Starz. However, Trace requested that the statement of findings should refer to Starz and the licensee at the time the breaches occurred (i.e. CSC), and not Trace. It also said that the statement should "be played at a time that does not impact Trace's revenue or create a risk to generate PR issues". ✂
52. Trace said that it is proud to be a company that focuses on diversity and that it "fights relentlessly against all forms of discrimination and racism". It said that it had not been aware of the breaches when it had acquired the Starz service and when Columbia Pictures had transferred the licence to it in December 2018. Trace said that the interactive content on Starz has been on hold since then "to avoid any issue" and until a "rebranding exercise" for Starz had been finished and "a robust interactive service is identified". It also said that the Trace name "should not be associated or mentioned in any Ofcom communication...regarding this issue (implying that Trace is responsible for the breach or that Trace was even aware of the situation when the service was acquired)".

Imposition of sanction

53. The following paragraphs set out the enforcement action we have considered and the sanction we have decided to impose.

Licence revocation

54. Section 238 of the Act provides Ofcom with the power to revoke a TLCS licence. In our consideration of whether it would be appropriate to revoke the licence we noted that the breach was not ongoing, that the image was broadcast as a result of "human error" and Columbia Pictures had explained the steps it had taken to improve its compliance procedures and prevent any similar breach occurring in the future. In addition, Columbia Pictures said it had

¹⁵ E.g. Radio Ikhlas (December 2018); Karimia Limited (February 2018); Iman FM (July 2017), Kanshi Radio (July 2017) and Ariana Television and Radio Network (July 2017).

¹⁶ See footnote 22 and [Decision and Revocation - Iman FM](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins/content-sanctions-adjudications/decision-and-revocation-iman-fm), 27 July 2017 (<https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins/content-sanctions-adjudications/decision-and-revocation-iman-fm>).

permanently banned the viewer who had submitted the image. We had no reason to consider that Trace, as the new licensee for Starz, would reverse these measures if it decides to recommence interactive broadcasting. Having regard to these factors, and taking into account the broadcaster's and audience's right to freedom of expression, we considered that it would not be appropriate to revoke the licence. We therefore went on to consider whether another form of sanction was appropriate in this case.

Imposition of a financial penalty

55. Under section 237 of the Act, Ofcom has the power to impose a financial penalty on the holder of a TLCS licence where it is satisfied the licensee has contravened a condition of its licence. Ofcom's Penalty Guidelines¹⁷ state (in paragraph 11) that: "Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence".
56. In determining whether to impose a financial penalty in this case, Ofcom took account of the following factors:
- CSC/Columbia Pictures' compliance process appeared to rely heavily on the judgement of a single moderator who was assessing a large number of images a day¹⁸;
 - the compliance documentation might not have been sufficiently accessible for its moderators and that the age of its moderators and the training they had received was such that they would not have understood the significance of the caricature in this case (paragraphs 39 and 40, and footnote 12);
 - the image was shown 22 times from 14:30 to 15:21 (51 minutes) for brief periods of 10 to 30 seconds at a time, totalling 7 minutes and 5 seconds; and
 - at the time of broadcast of the breach, the licence for Starz was held by CSC, which was a subsidiary of Columbia Pictures, which held the licence at the time of our Breach Decision. The licence is currently held by Trace. In considering an appropriate sanction, Ofcom has had regard to the circumstances at the time of the breach. We have taken into account the previous breaches of both the advertising and broadcasting standards Codes on CSC licensed services. Columbia Pictures had no history of contraventions of either the Broadcasting Code or BCAP Code. However, we considered that it would be appropriate in this case to give weight to CSC's track record of compliance on other services, given that CSC had been a subsidiary of Columbia Pictures since August 2014. Since July 2013, when we sanctioned CSC for inappropriate scheduling, it has breached our Codes five times. Three of these breaches involved inappropriate scheduling for children and one case involved commercial references on television. The fifth case (the current case) was the first to involve Starz as a service of CSC. It was also CSC's first serious breach of harm and offence rules. Ofcom considered that these five breaches provided some evidence of inadequate compliance processes being in place. We also considered that the latest breach i.e. the present case, was a serious but isolated breach of the relevant rules on harm and offence.
57. However, in considering whether to impose a financial penalty in this case, we also took into account the following:

¹⁷ See footnote 5.

¹⁸ Columbia Pictures said that it had "sufficient and appropriate" monitoring systems in place. It added that: "All texts and images are monitored and no image is ever published without it having been approved by a moderator"; each day it received about 200 images of which its moderators rejected on average 30 for various reasons (such as swearing, nudity, and appearance of illegal activity); and that since November 2016 it had rejected more than 18,000 images submitted by audience members. See also paragraph 39.

- we have no evidence to suggest the breaches occurred deliberately or with the knowledge of CSC or Columbia Pictures' senior management. As above, we considered rather that the image was broadcast in error because a moderator did not refer the image to a manager for better understanding and scrutiny. If the moderator had followed CSC's/Columbia Pictures' compliance procedure (paragraphs 39 and 40), we consider it unlikely that the image would have been broadcast;
 - Columbia Pictures said that, following a viewer complaint, it had deleted the image at 15:35 and at 15:45 it had broadcast an apology;
 - according to CSC/Columbia Pictures, the viewer who submitted the offending image had "been permanently banned from the channel" and the material was deleted. There followed: a "swift senior management review" to establish the circumstances of the breach; improvements to its compliance procedures¹⁹; and an appropriate disciplinary process; and
 - Columbia Pictures said that, as a result of the incident it featured "an onscreen banner message which rolled out regularly 'Viewers should have courtesy and respect for all other viewers, for full T's and C's visit www.starz.co.uk".
58. Ofcom has also had regard to relevant precedents set by previous cases. We considered that the following precedents are of particular relevance.
59. **27 November 2006, MTV Dance**²⁰ – Ofcom recorded a breach of Rule 2.3 of the Broadcasting Code for broadcasting offensive material without sufficient context but did not consider that the case warranted the imposition of a statutory sanction. It related to the broadcast of inflammatory sectarian text messages. These were displayed in a banner style running below a music video. They included a mixture of loyalist and republican comments referring to the Ulster Defence Association, a reference to Celtic football prefixed by a republican slogan in Irish meaning: 'our day will come' and a misspelled suggestion that all "Fenons" (Fenians) should die. MTV apologised for the sectarian references in the texts. It said the moderator responsible for displaying the texts was unaware of their significance. It added that the nature of the references was further confused by the fact that they seemed to be mixed in with what appeared to be football references, making them more difficult to identify. It also said that it would revise and update its internal training programme for moderators to minimise a recurrence of this type of breach. MTV Dance was controlled by MTV Networks Europe. We did not find that this case warranted the imposition of a statutory sanction.
60. There are clearly substantial similarities between this case and the current case. We consider that this case should have put all licensees on notice that careful moderation of contributions by viewers was required to comply with the Broadcasting Code. CSC should have known from this case that a licensee remains editorially responsible for everything that appears on-screen.
61. We also consider that there is substantial precedent to show that the broadcast of hate speech may be liable to attract a statutory sanction including a financial penalty. For example:

¹⁹ The Decision sets out in full the steps taken by Columbia Pictures to improve its compliance, which included: a Senior Compliance Manager and the Channel Manager reviewing all processes to make sure all staff were "fully aware of the compliance requirements" and an updating of its compliance documentation to be more accessible and user-friendly for moderators.

²⁰ See: [Ofcom broadcast bulletin 27 November 2006, MTV Dance](https://www.ofcom.org.uk/__data/assets/pdf_file/0025/46654/issue74.pdf) (https://www.ofcom.org.uk/__data/assets/pdf_file/0025/46654/issue74.pdf).

62. **4 June 2008, MTV Networks Europe**²¹ – Ofcom imposed a penalty of £35,000 for a breach of Rule 2.3 for the broadcast of derogatory language on MTV France in a programme called Belge Chat. The programme was broadcast as part of MTV France’s late-night service, in partnership with a local text messaging service, also called Belge Chat. It superimposed text messages sent in by viewers in the form of a ‘strap’ on the lower-third of the screen. The breaches of Rule 2.3 concerned racist and homophobic text messages. MTV Networks said that the offensive texts were transmitted because the broadcast was left “unmonitored” for a short period of time when a gap occurred between the departure of one moderator and the arrival of another. In imposing the penalty, we also took into account a breach of Licence Condition 11 (failure to supply recordings) and that, although we had previously warned MTV Networks about the need to moderate texts with more care as a result of the MTV Dance case (paragraph 59), it had not ensured that MTV France did so.
63. **25 July 2017, Kanshi Radio Limited**²² – Ofcom imposed a penalty of £17,500, and a direction to broadcast a statement of findings for breaching rules 2.1, 2.3, 3.2 and 3.3 of the Code. The case concerned two broadcasts of an approximately 11-minute song, *Pinky Pinky*, in Punjabi, whose lyrics contained a number of aggressively pejorative references to the Muslim community, to Muslim women in particular, and to Islam. We took into account evidence from the licensee that the broadcast of the song was unintentional. We were concerned by the broadcast of hate speech in pre-recorded content on two separate occasions, but which had not been identified by Kanshi Radio Limited before transmission. In our view, there had been a clear lack of adequate compliance processes and there had been no apology when the broadcaster became aware of the issue.
64. **11 November 2016, Club TV Limited**²³ – in which a sanction of £65,000 was imposed on the broadcaster relating to antisemitic content by religious scholars, following two previous unsanctioned compliance breaches by an entity with which it shared its compliance function.²⁴
65. **20 December 2016, Mohuiddin Digital Television Limited (“MDT”)**²⁵ – in which a sanction of £75,000 was imposed on the broadcaster relating to antisemitic content by religious scholars, taking into account two previous serious contraventions of the Broadcasting Code by the previous licence holder of the service for which Ofcom had imposed significant financial penalties.
66. **19 December 2018, Radio Ikhlas Limited**²⁶ – Ofcom imposed a penalty of £10,000 and directed the licensee to broadcast a statement of Ofcom’s findings for breaching Rules 2.3, 3.2 and 3.3. This two-hour phone-in programme included a 21-minute segment, during which the presenter discussed the beliefs of the Ahmadiyya community in offensive and pejorative terms. Ofcom found that the licensee had failed to identify through its training and monitoring processes that the presenter lacked understanding of the Broadcasting Code. Ofcom found that the presenter,

²¹ See: [Sanction 34\(08\) MTV Networks Europe](#)

(https://www.ofcom.org.uk/__data/assets/pdf_file/0022/49324/mtv.pdf)

²² See: [Sanction \(107\)17 Kanshi Radio Limited](#)

(https://www.ofcom.org.uk/__data/assets/pdf_file/0020/105167/kanshi-radio-sanction-decision.pdf).

²³ See: [Sanction 103\(16\) Club TV Limited](#)

(https://www.ofcom.org.uk/__data/assets/pdf_file/0032/93866/Peace-TV-Urdu-Sanctions-Decision.pdf).

²⁴ See: [9 November 2009, Lord Production Incorporated Limited](#)

(https://www.ofcom.org.uk/__data/assets/pdf_file/0026/47168/issue145.pdf);

and: [19 November 2012, Lord Production Incorporated Limited](#)

(https://www.ofcom.org.uk/__data/assets/pdf_file/0028/47665/obb218.pdf).

²⁵ See [Sanction 104 \(16\) Mohiuddin Digital Television Limited](#)

(https://www.ofcom.org.uk/__data/assets/pdf_file/0022/96124/Noor-TV.pdf)

²⁶ See: [Sanction 110 \(18\) Radio Ikhlas](#)

(https://www.ofcom.org.uk/__data/assets/pdf_file/0015/130344/Radio-Ikhlas-Sanction-Decision.pdf)

and by extension the licensee, deliberately engaged in hate speech, broadcasting abusive and offensive content which was intended to spread, incite, promote or justify hatred against Ahmadi people on religious grounds. Alternatively, we considered that the contraventions were reckless as the licensee did not have sufficient and appropriate systems in place to prevent the breaches occurring or to take swift action to mitigate their adverse effects. It failed to monitor its live output on the day of the contravention and it did not broadcast an apology (in a different programme and time of day) for over a month (after Ofcom had contacted it about the programme). This was the first breach of our rules for hate speech by the licensee.

67. Ofcom took into account that in the present case there was no deliberate, reckless or repeated breach of rules relating to hate speech. In addition, we considered that CSC/Columbia Pictures' response to the breach, which included, among other things, deleting the image, broadcasting an on-screen apology and improving its compliance procedures (see footnote 12 and paragraph 40), demonstrated that it had taken the breach fairly seriously. We also took into account that the present breach was CSC's first breach of either the Broadcasting Code or the BCAP Code involving hate speech, and appeared to have resulted from an isolated²⁷ lapse of judgement of a single moderator against a backdrop of the rejection of a large number of viewer contributions²⁸ as part of an established compliance process and structure for monitoring viewer contributions.
68. Having regard to these factors, and taking into account the broadcaster's and audience's right to freedom of expression, we considered that it would not be appropriate to impose a financial penalty in this case. We therefore went on to consider whether another form of sanction was appropriate.

Direction to licensee to take remedial action

69. Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or a statement of Ofcom's findings (or both), or not to repeat a programme which was in contravention of a licence condition.
70. It is Ofcom's view that a direction not to repeat the programme would not, by itself, be an appropriate sanction in all the circumstances. This is because Columbia Pictures, as set out in the Breach Decision, had said that the picture had been accidentally broadcast due to human error and it had implemented changes to its procedures to ensure that no similar offensive images are broadcast again. We understand that the interactive service has now been suspended altogether.
71. Ofcom also took into account that CSC/Columbia Pictures had broadcast an apology for showing the offensive image. However, in our view this apology was insufficient to mitigate the potential harm and offence the breaches could have caused (paragraph 44). In considering whether to direct the Licensee to broadcast a statement of Ofcom's findings in this case, we took account of the precedent cases above and also:
72. **24 May 2007, Channel Four Television Corporation (Channel 4)**²⁹ – Sanction to direct Channel 4 (and S4C) to broadcast a statement of Ofcom's findings on three separate occasions, for breaches of 2.3 and 1.3 (inappropriate scheduling). This case concerned the fifth series of *Big Brother*. In relation to Rule 2.3, Ofcom found that in the case of three incidents which occurred in three separate post-watershed programmes (one of which was repeated pre-watershed), the licensee failed to apply generally accepted standards to the material and that racially offensive remarks were not adequately justified by the context. Ofcom considered that the breaches

²⁷ See paragraphs 56 and 57.

²⁸ See footnote 18.

²⁹ See: [Ofcom Content Sanctions Committee, 24 May 2007](https://www.ofcom.org.uk/__data/assets/pdf_file/0015/61404/channel4_cbb.pdf) (https://www.ofcom.org.uk/__data/assets/pdf_file/0015/61404/channel4_cbb.pdf)

when taken together were a serious failure in compliance. We took into account the fact that the breaches did not result from deliberate, reckless or grossly negligent actions by Channel 4 but rather represented a serious error of judgment as to the handling of the potentially offensive material to provide adequate protection to viewers. We also took into account the fact that Channel 4 acted promptly in exercising control over subsequent events in the House; and had already put in place new compliance procedures intended to ensure that similar failures to comply with the Code should not occur again.

73. **21 December 2015, Lancaster LLC**³⁰ – Ofcom recorded a breach of Rule 2.3 but did not consider that the breach warranted the imposition of a statutory sanction. The case related to the broadcast of a religious sermon, recorded in 1985, by evangelical Christian minister Jimmy Swaggart, which contained homophobic comments. We did not consider that this case warranted the imposition of a statutory sanction. In our view, a particularly relevant contextual factor was that it would have been clear to viewers that the Jimmy Swaggart sermon dated from 30 years prior to the date of broadcast, and therefore the audience were more likely to have perceived the remarks as reflecting outdated views on homosexuality. In contrast the current case involved imagery broadcast with no surrounding context which promoted the hatred of Jewish people, and this imagery had also recently been published on neo-Nazi websites.
74. **9 May 2016, Lancaster LLC**³¹ – Ofcom recorded breaches of Rules 2.2 and 2.3 and directed the licensee to broadcast a summary of its findings. The programme in question, *Frances and Friends*, is a daily discussion programme that provides analysis of religious doctrine and world events. During a live discussion about immigration in Europe, one of the presenters made Islamophobic and materially misleading comments. Lancaster LLC also took a range of steps to improve its compliance and prevent a recurrence of similar breaches. We considered the appropriate regulatory remedy was to direct the licensee to broadcast a summary of the breach decision, in recognition of the seriousness of the breaches³², rather than to impose a financial penalty.
75. Ofcom also considered the Licensee’s representations that its name “should not be associated or mentioned in any Ofcom communication...regarding this issue (implying that Trace is responsible for the breach or that Trace was even aware of the situation when the service was acquired)”. Ofcom acknowledged that Trace was not the licensee with editorial responsibility for the Starz service at the time the breaches of the BCAP Code took place. However, it is now the licensee. We are seeking to encourage compliance by broadcasters. Therefore, in the case of a sanction being imposed on a broadcaster who has acquired a licensed business after breaches have taken place but before a sanction has been imposed, we consider it appropriate, in principle, that the buyer of a licensed business should receive the same penalty as the seller of the business would have done. In such circumstances, the potential impact of a statutory sanction incentivises the buyer to carry out appropriate due diligence when making an acquisition in order to factor the risk into the price it pays for the business. In that way, the seller who was responsible for the breach (Columbia Pictures in this case) ought still to be impacted by the imposition of the sanction. We understand that in this case Trace says it was unaware of the issue when it made the acquisition. However, it knew that it was buying a licensed service, so we did not consider that this is a good reason not to publish its name or

³⁰ See: [Ofcom Broadcast Bulletin, Issue 295, 21 December 2015](https://www.ofcom.org.uk/__data/assets/pdf_file/0016/50290/issue_295.pdf), page 18 onwards (https://www.ofcom.org.uk/__data/assets/pdf_file/0016/50290/issue_295.pdf).

³¹ See: [Ofcom Broadcast Bulletin, Issue 304, 9 May 2016](https://www.ofcom.org.uk/__data/assets/pdf_file/0035/49796/issue_304.pdf), page 18 onwards (https://www.ofcom.org.uk/__data/assets/pdf_file/0035/49796/issue_304.pdf).

³² As set out in paragraph 1.14 of the Sanctions Procedures, Ofcom has a range of sanctions available to it including “issue a direction to broadcast a correction or a statement of Ofcom’s findings which may be required to be in such form, and to be included in programmes at such times, as Ofcom may determine”.

impose a sanction on it, and we considered that to establish the appropriate incentives for the sector its identity, which is in any event a matter of public record, must be included.

76. Taking into account the particular facts of this case and the relevant precedent cases, Ofcom considered that it would be proportionate to direct the Licensee to broadcast a statement to be prepared by Ofcom, summarising Ofcom's findings in relation to the breaches in this case on one occasion, on a date and in a form to be determined by Ofcom. This is because, in our view, it is necessary to bring the breaches, and Ofcom's actions in response to the breaches, to the attention of the viewers of Starz. The statement should make clear that the licence for Starz was held by CSC at the time of the breach, but should identify the current licensee.

Decision

77. Having regard to all the circumstances referred to above, including the particularly serious nature of the BCAP Code breaches in this case and all representations to date from the Licensee, Ofcom's Decision is that the Licensee should broadcast a statement of Ofcom's findings in this case, on a date and in a form to be determined by Ofcom.

Ofcom

27 June 2019