

Channel 4's response to Ofcom's consultation on The Scheduling of Television Advertising: Approaches to Enforcement

Channel 4 welcomes the opportunity to provide input to Ofcom's consultation on potential changes to the Code on the Scheduling of Television Advertising (COSTA) – including the way in which rules on the permissible number of advertising breaks should be enforced.

Channel 4 is a publically owned, not for profit, public service broadcaster entirely funded by commercial revenues, the vast majority of which are derived from advertising. Advertising is therefore central to enabling Channel 4 to fulfil its public service remit and obligations, including financing our investment in a diverse range of high-quality UK originated content.

In 2013 Channel 4 invested around £430m in UK originated content across all of our services, supporting 367 independent production and digital media companies from across the UK. This investment has resulted in an unprecedented level of creative success yielding eight BAFTAs, two Oscars and the prestigious Channel of the Year award for Channel 4 at the Edinburgh television festival.

Advertising plays a key role in sustaining this investment and indeed the investment of other commercially funded PSBs. As such Channel 4 believes that any decisions to change the COSTA rules which govern television advertising should be carefully considered, evidence based and should seek to deliver benefits to both Viewers and Broadcasters.

Answers to specific questions raised in the consultation:

Question 1: Do you agree with our assessment criteria as set out in Section 5?

Channel 4 agrees with the assessment criteria as set out in Section 5.

Question 2: What are your views on the enforcement approaches set out in Section 5?

Channel 4 believes that the Electronic Programming Guide (EPG) enforcement approach provides the most robust, consistent and relevant method for calculating the scheduled duration of a programme. The data from published programme guides is readily available and transparent, and from a practical perspective the EPG captures a reliable indication of the "hard junctions" within a broadcaster's schedule that reflect the duration of a programme and consequently the permitted amount of advertising minutage.

Given the importance of EPG guides in helping viewers to navigate through large amounts of programming information and plan their viewing experience, and with all platforms having invested significant effort in creating enhanced graphical user interfaces, it is our experience that the vast majority of broadcasters keep the information supplied to EPG providers as accurate and up to date as possible – with a number of EPG's being able to update their displays up to 1 hour prior to transmission. This is in contrast to Ofcom's perception in para 5.37, that EPG displays are "*based on data that may have been submitted to EPG providers two weeks before transmission*" – and which may not have been subsequently updated.

Our view on the three variants of TX approach that could be considered; a) "Programme slot", b) "Editorial content plus internal breaks" and c) "Editorial content alone", are that none of these options provide the same levels of robustness and transparency as the EPG method. There are also a number of issues created by each of the variants i.e.:

- Data for non-BARB registered channels would not be easily available and for those others where BARB data is available, it is highly likely that there will be significant variation in how information and data is recorded, leading to variable standards of transparency by broadcaster.
- Where the TX approach adopted equates a programme's scheduled duration to the period between the start and end of the programme (including internal breaks), there is a possibility that there would be a significant reduction in the number of internal breaks that broadcasters would be entitled to schedule during the majority of programmes. Ofcom has suggested that broadcasters could adopt strategies that would enable them to retain internal breaks in programmes i.e. by moving advertising from end breaks to internal breaks. However, this is a remedy that would not be available to those broadcasters with PSB channels in their portfolio, such as Channel 4, as current regulation caps the length of centre breaks on PSB channels to 3 minutes and 50 seconds, of which only 3 minutes and 30 seconds can be spot advertising.
- Any change from the established, and widely accepted, method of EPG enforcement to a TX model will inevitably lead to significant financial impact on both Ofcom and the majority of broadcasters, as additional resources will be needed and extensive amendments will have to be made to planning, scheduling and airtime sales systems to accommodate the new way of working.

Question 3: *What enforcement approach should Ofcom adopt for the purpose of enforcing COSTA rules on the scheduling of advertising during programmes? If you consider that Ofcom should use an approach other than the EPG approach or one of the TX approaches described in this document, please explain your preferred approach in detail*

Channel 4 believes that there is no valid reason for changing the current EPG approach for the enforcement of COSTA rules. It is clear that although the AVMS directive does not provide an approved method for calculating the scheduled duration of a programme, there is already an established and widely accepted method currently in use within UK broadcasting. Whilst it may be the case that the AVMS directive did not explicitly intend children's programmes to be 35 minutes long before an internal break could be taken, there are a number of practical and straightforward mitigations that broadcasters can, and have previously applied, in order to reduce any negative financial impact resulting from the directive. These mitigations are clearly outlined in the consultation document. Our view is that a move to any of the TX enforcement methodologies outlined in the document would have a small benefit for a limited number of broadcasters, at the expense of a disproportionately large negative effect on the wider industry.

For broadcasters that transmit children's programmes:

Question 4: *If enforcement is based on the EPG approach, what EPG slots (that are greater than 30 minutes) are you likely to use when scheduling internal breaks in children's programmes (e.g. slots that show timing to the nearest one minute junction or those displayed to the nearest five minutes)?*

N/A

Question 5: *Do you agree that the clarification relating to the definition of advertising appropriately transposes the requirements of the AVMS Directive? If not, please explain why.*

Ofcom has separately clarified to Channel 4 that they are “not intending to include the promotion of programmes or programme related material in a broadcaster’s allocated advertising minutage. The purpose of the removal of the footnote is to clarify that other restrictions (such as placement restrictions) could apply (if the criteria in the definition of advertising is met). This is reflected in the draft of the revised version of COSTA in Annex 8” – Steven Turner, Ofcom, email correspondence of 22.8.14

On this basis, Channel 4 agrees that the clarification relating to the definition of advertising appropriately transposes the requirements of the AVMS Directive.

Question 6: *Do you agree with the proposed clarification and definition of a clock hour? If not, please explain why.*

C4 agrees with Ofcom’s proposed clarification and definition of a clock hour.

Question 7: *Do you believe that there are potential impacts of the above proposal that Ofcom has not identified? If so, please provide details.*

Channel 4 would welcome additional clarification as to the pro-rata methodology for calculating the advertising minutage accruing from programming periods that are shorter than multiples of one hour. For example, if one hour of programming (60 minutes) allows for 12 minutes of advertising, we would assume that one hour & 30 minutes (90 minutes) of programming would allow for 18 minutes of advertising. We would appreciate Ofcom confirming that this methodology of calculating minutage for part hours is correct within the new definition of a clock hour.

Question 8: *Do you agree with the proposed clarification of the definition of films? If not, please explain why.*

Ofcom has separately clarified the following to Channel 4 as regards the definition of a single drama and series.

“If the classification of a programme was questioned, Ofcom would assess the matter on a case-by-case basis. However, we would refer to a number of factors when determining whether a programme is a single drama. For example,

- *The number of, or proximity to any other programmes in the schedule that feature the same central characters;*
- *Whether it contains a standalone storyline that is fully or partially resolved at the end of the programme;*
- *The duration of the programme.*

You give the example of a single drama that has a sequel (presumably continuing the original’s storyline or containing some of the original’s characters) the following year. If the original and the sequel were shown in succession, there would, in our view be grounds to class the programmes as a series or a serial for the purposes of COSTA. However, if it was an

isolated feature-length item containing an independent story (albeit related to the original) it is likely to be a single drama.

*In our telephone conversation, you asked how COSTA placement rules would apply to a final, feature-length episode of *The Inbetweeners* (that did not have a cinematic release). As *The Inbetweeners* is a well-established television series, we would not consider such a programme to fall within the scope of the rule restricting advertising breaks in single dramas". Steven Turner, Ofcom, email correspondence of 22.8.14*

On the basis of the above clarification, Channel 4 agrees with the proposed clarification of the definition of films.

Question 9: *Do you agree that the proposed clarification of the definition of teleshopping is appropriate? If not, please explain why.*

Channel 4 agrees that the proposed clarification of the definition of teleshopping is appropriate.

Question 10: *Do you have any comments on how the exemption for L-DTPS is reflected in the draft Code?*

Channel 4 believes that the proposed waiver of advertising minutage rules for local services, combined with a gifted EPG position of channel no.8 on Freeview, delivers a hugely valuable commercial advantage to the current and future licensees of local TV franchises. This significant commercial advantage would be further enhanced by any relaxation in the programme commitments outlined in local TV licences.

We agree with Ofcom's recent decision not to vary the programme commitments of London Live (ESTV) but would note that if such a relaxation were made in the future, for any local TV franchise, that the proposed exemption for L-DTPS would become a disproportionately large benefit that is not available to other PSB broadcasters.

On that basis, we believe that the drafting of the exemption should clarify that any consultation on proposals by local TV licence holders to vary their programme commitments, also gives due consideration to whether it is still appropriate for the licensee to retain the exemption from the requirements set out in the COSTA code, if the programme variation is granted.

Question 11: *Do you have any comments on the proposal to update COSTA to reflect the changes to the rules on advertising break lengths on PSB channels?*

Channel 4 is extremely supportive of the proposal to update COSTA to reflect the changes to the rules on advertising break lengths on PSB channels.

Question 12: *Do you have any comments on the proposal to change the layout of COSTA or on the minor revisions proposed?*

Channel 4 does not have any comments on the proposal to change the layout of COSTA or on the minor revisions proposed.

Question A1: Do you agree with our approach to mitigation strategy 1?

Channel 4 agrees with Ofcom's approach to mitigation strategy 1 for children's broadcasters.

Question A2: Do you agree with our approach to mitigation strategy 2?

Channel 4 agrees with Ofcom's approach to mitigation strategy 2 for children's broadcasters.

Question A3: Do you agree with our approach to mitigation strategy 3?

Channel 4 agrees with Ofcom's approach to mitigation strategy 3 for children's broadcasters.

Question A4: Do you agree with our approach to mitigation strategy 4?

Channel 4 agrees with Ofcom's approach to mitigation strategy 4 for children's broadcasters.

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