

About Arqiva

Arqiva Digital Platforms is licensed to operate two of the UK's six digital terrestrial television multiplexes and is a founder member of Freeview along with the BBC and BSkyB. Consequently Arqiva Digital Platforms enables major media companies such as BSkyB, Channel 4, ITV, UKTV, MTV and others to bring their TV and radio services to Freeview - the free-to-air digital television service. Arqiva has worked hard to stimulate innovation and expand diversity of choice on the DTT platform to ensure that the platform remains attractive over the long term and we are keen to ensure that any changes to the platform which limit these aspects should be exposed to the utmost scrutiny.

Summary of response

Arqiva appreciates the opportunity to respond to this consultation.

Arqiva Digital Platforms carries four Adult Chat services, which are licensed by the Dutch Regulator (Commissariaat Voor De Media) and broadcast in the UK under the Television Without Frontiers (TWF) regulations with Ofcom’s knowledge.

Arqiva agrees with Ofcom that it is of paramount importance to ensure that viewers and consumers should be protected from offensive and harmful material in television and radio services. However, in the construction of Option 4 Ofcom appears to have unduly discriminated against the DTT Platform and, in particular, the Freeview service. It seems wholly inappropriate for Ofcom to happen upon an apparently unsubstantiated concern with regard to a specific service offering on one platform, within an adjacent consultation process, to result in a remedy for that concern without due process having been followed.

In particular, Arqiva believes that:

- Most of the suggested protections are already in place;
- Any specific concerns with the DTT Platform should have been raised with the relevant bodies and stakeholders ahead of the consultation process to offer the industry an opportunity to resolve.
- Should further remedies be required on the DTT Platform, Ofcom should consult with relevant constituent bodies of the DTT Platform prior to the implementation of any changes affecting Participation TV.
- The impact of Ofcom’s proposal would increase the regulatory burden on the DTT platform damaging its ability to innovate and compete with all other platforms which is not in the long term interests of the consumer and contrary to Ofcom’s duties to encourage competition and support diversity of choice.

In summary, Arqiva would welcome the opportunity to respond to a wider industry debate regarding Participation TV and the DTT Platform to determine the level of harm and appropriate remedies.

Section A: Arqiva’s views on Ofcom’s proposals

A.1. Overview

Arqiva agrees with Ofcom that it is of paramount importance to ensure that viewers and consumers should be protected from offensive and harmful material in television and radio services. However, in the construction of Option 4 Ofcom appears to have unduly discriminated against the DTT Platform and, in particular, the Freeview service.

In the following section, Arqiva provides further details as to why it believes that:

- Most of the suggested protections are already in place;
- Specific concerns with the DTT Platform should be raised with the relevant bodies;
- Should further remedies be required on the DTT Platform, Ofcom should consult with relevant constituent bodies of the DTT Platform prior to the implementation of any changes affecting Participation TV.

A.2. Most of the suggested protections under “Option 4” are already in place

Arqiva believes that the DTT platform already provides the protections against the risk of offense suggested by Ofcom in “Option 4”

Adult Chat positioned as “Adult” services

Following DMOL’s 2009 LCN consultation, all Adult Chat services on the DTT platform have been moved to the Adult section of the LCN listing

- Television X LCN93
- Smile TV2 LCN94
- Smile TV3 LCN95
- Babestation LCN96
- Partyland LCN97
- TMTV LCN98
- Babestation2 LCN99

Adult chat scheduling restriction of 9pm

A 9pm restriction would still seem to be appropriate.

It is noted that none of the current Adult Chat services on Freeview commence before 9pm, indeed no current DTT Adult Chat service commences before midnight and for channels whose broadcast hours extend beyond 5:30am the services transfer to non-sexual content:

- Smile TV2 hours 00:00 – 05:00
- Smile TV3 hours 00:00 – 06:00
- Babestation hours 01:00 – 06:00
- Babestation2 hours 04:00 – 06:00

- Partyland hours 01:00 – 06:00
- TMTV hours 03:00 – 09:00

A.3. Specific concerns with the DTT Platform should be raised with the relevant bodies

Should Ofcom have any concerns with the operation of the DTT Platform, Arqiva would encourage Ofcom to raise these directly with relevant bodies before attempting to address these in an open consultation.

“Freeview does not currently offer clear labelling of channels”

Arqiva recognises that the horizontal receiver platform (encouraged initially by the ITC, maintained by Ofcom and enshrined in the DTT Multiplex licences) has been responsible for multiple non-standardised EPGs on DTT with a mixed responsibility between DMOL (for LCNs) and the Consumer Electronics manufacturers responsible for the EPG presentation.

Whilst Ofcom states that Freeview does not currently offer clear labelling of channels the issue is not clearly explained in the consultation and was not raised by Ofcom as an issue during the DMOL LCN consultation in 2009.

Should clear labelling be a key issue a number of options could be investigated:

- Prefacing Adult and Adult Chat with the word “Adult”;
- Providing “Book-end” slates at the start and end of the Adult genre.

A.4. Should further remedies be required on the DTT Platform, Ofcom should consult with relevant constituent bodies of the DTT Platform prior to the implementation of any changes affecting Participation TV

Arqiva would encourage Ofcom to more fully engage with the various constituents of the DTT Platform and that the industry should be allowed to respond and be given time to implement any agreed changes before the imposition of any new rules.

We have proposed above that most of the suggested protections under “Option 4” are already in place and that, if necessary, additional protections can be put in place but in the absence of any prior consultation with the DTT Platform’s industry bodies and stakeholders in advance of this consultation there has not been time to agree on the most suitable course of action or implement any necessary changes.

Therefore Arqiva would urge Ofcom to engage with the DTT Platform about the specific issues it has relating to the labelling of Adult and Adult Chat content on the Freeview service prior to the implementation of any changes affecting Participation TV.

Section B: Response to specific questions

In this section, we provide responses to Ofcom’s questions. However, we refer Ofcom to our views expressed in section A of our response for our over-arching perspective.

Question 1:

a) Do you agree with Ofcom’s assessment of those stakeholders likely to be affected by changes to the regulatory framework for Adult Chat and Psychic PTV services?

Arqiva does not have market research information specific to this question

b) Do you agree with our understanding of the industry and operators?

Ofcom does not appear to have taken into account the effect on multiplex license operators who often monetise the ‘dark hours of 00:00 to 05:30 by carrying Adult Chat content as these hours have limited value for traditional FTA services.

Hence the actions proposed, would have a detrimental impact on commercial DTT multiplex license operators, diminish inter-platform competition and reduce the extent to which DTT multiplex licence operators are able to comply with the requirement to serve diverse tastes and interests.

Question 2:

Do you agree with our analysis of the options available for regulation of the promotion of premium rate services of a sexual nature?

Whilst the four Options are well structured, we are concerned that the ‘do nothing’ option has not been explored (i.e. the consultation has already concluded that a change must be made) and that no engagement with the “Freeview platform” in order to minimise the effect on Freeview Adult Chat PTV appears to have taken place. In the absence of such engagement with the DTT Platform it is unclear what further options could have been proposed.

and

a) that on the basis of options, a change to the existing rules appears merited?

See response to 2 above.

b) of the options presented, Option 4 meets the regulatory duties and suggests least potential impact on stakeholders?

No. Whilst Option 4 has least potential impact on non-DTT stakeholders it does have a significant impact on Adult Chat PTV operators on Freeview and on the commercial DTT multiplex license operators. Furthermore, the impact of Ofcom’s proposal would appear to increase the regulatory burden on the DTT platform damaging its ability to innovate and compete with all other platforms. We do not believe that this is in the long term interests of the consumer and contrary to Ofcom’s duties to encourage competition and support diversity of choice.

Whilst Ofcom has recognised that the recent changes carried out by DMOL to include Adult Chat in the Logical Channel Number’s Adult Genre has offered further protection to Freeview viewers, this does not appear to fully satisfy Ofcom’s requirements and it is disappointing that Ofcom did not raise these issues at the time of the DMOL consultation.

Indeed, no dialogue or programme of work appears to have been undertaken by Ofcom to mitigate the changes which have only been identified as a result of this consultation.

The issues associated with the DTT EPG are largely a consequence of the licensing regime and the horizontal set top box market created by ITC/Ofcom in 2002 and, as a result, the Multiplex Licence Operators have little opportunity to influence the display of EPG data. It is worth noting that the DTT Multiplex Licence Operators have a requirement to ensure that a diversity of choice and tastes are served by the content delivered on the DTT platform and the restriction of Adult Chat content would remove the diversity of choice afforded on the DTT Platform on the basis of a harm that has not been substantiated. Furthermore, it is worth noting here that Ofcom’s concern of harm associated with Adult Chat on DTT ignores the impact of free to air adult related content on other channels post the watershed, i.e. Virgin1 and Fiver, which is as easy if not easier to happen on due to it being within the General Entertainment category.

We urge Ofcom to engage with DMOL, Freeview, the Multiplex License Operators, the Broadcasters and any other affected stakeholders to identify how the DTT specific issues can best be addressed and develop further protection, if required, rather than banning such services from Freeview.

c) that the scheduling restrictions of 9pm to 5.30am and requirements for labelling and EPG position under option 4 offer appropriate protection for viewers?

The proposed scheduling restrictions reflect the existing DTT Adult Chat operators’ broadcasts.

Question 3:

Do you agree with our analysis of the options available for regulation of the promotion of live personal psychic services,

The DTT Platform does not currently carry any Psychic TV services; however the comments made above also apply here.

and

a) on the basis of the options, that a change to the existing rules appears merited?

b) of the options presented, Option 4 meets the regulatory duties and suggests least potential impact on stakeholders?

c) that the restriction of promotion to specific live personal psychic services and the requirements for labelling and EPG position provide appropriate protection for viewers?

Question 4:

a) Do you agree with the principles identified for changes to the Advertising Code rules on promotion of PRS of a sexual nature (rule 11.1.2) and psychic practices (rule 15.5)?

The proposed changes to 11.1.2 of the Advertising Code appear acceptable regarding (2) Broadcast Hours, but we remain concerned that Ofcom’s proposed interpretation of the definition of (1) (ii) “Channels that are licensed for the purpose of the promotion of the services and are appropriately positioned and labelled within an “Adult” or similar section of an Electronic Programme Guide” would unfairly discriminate against the Freeview service as Ofcom has stated within the consultation that the current ‘appropriate positioning’ by DMOL of Adult and Adult Chat PTV at the end of the video LCNs would not be sufficient.

In the absence of any Ofcom dialogue or programme of work to mitigate the proposed changes on the DTT Platform, Arqiva would strongly suggest that further discussions take place before the banning of Adult Chat PTV on the existing DTT platform and the resultant loss of programme diversity and reduction of cross-platform competition.

We urge Ofcom to undertake evidence based decision making in conjunction with the relevant stakeholders with regard to the Freeview issue and the industry should be given an opportunity to remedy any risk of harm before such a considerable intervention is undertaken.

b) Do you agree with the wording of the proposed rules? If not, please suggest alternative wording.

Should Ofcom’s consultation result in Option 4 being implemented with the proposed changes to 11.1.2 of the Advertising Code, Arqiva would seek clarification on the definition of (1) (ii) “Channels that are licensed for the purpose of the promotion of the services and are appropriately positioned and labelled within an “Adult” or similar section of an Electronic Programme Guide.” We believe that further work is possible to optimise the labelling arrangements on the DTT platform to minimise the risk of harm and alleviate the need for the proposed changes.