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## **Ofcom Consultation**

### **Participation TV**

### **Rules on the Promotion of Premium Rate Services**

### **Harvan Europe Ltd Submission**

#### **About Harvan Europe Ltd**

Harvan Europe Ltd provides SMS services to a number of Adult Babe shows including Partyland on Freeview. We have operated in this sector for 7 years and employ 20 people

#### **General**

The previous 2007 and 2008 PTV consultations proposed changes to rules in Ofcom's Broadcasting Code in order to satisfy the relevant European legislation contained in the Audiovisual Media Services Directive (AMSD) that advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Harvan Europe Ltd agrees with the principle but emphasises that the purpose of the directive is to ensure consumers are properly informed and its application should not result in consumers being denied or having restrictions placed upon access to legitimate, popular and well established services. As stated in our previous submissions on this subject we believe improvements in separating editorial content from advertising to avoid consumer confusion can readily be achieved without potentially damaging and disproportionate regulatory intervention. Harvan Europe Ltd takes the view that such changes are best considered via a co-regulatory approach with support and input provided by regulators and industry alike.

We note that this latest consultation document represents both a final statement on broadcasting rules on the use of PRS to ensure distinction between editorial and advertising content together with proposed further consultation on possible changes to "relevant Advertising Code" rules, which we assume to refer to the Advertising Standards Authority (ASA) Code for broadcasting (BCAP) and known elsewhere in the consultation as the Television Advertising Standards Code.

The Ofcom final statement makes clear that programmes designed to promote PRS will be categorised as teleshopping and will no longer be considered as acceptable under the Broadcasting Code as constituting editorial content. Such services, and specifically PRS of a sexual nature (termed Adult Chat PTV) and some "specific" Psychic PTV, wishing to continue with their current formats, will be considered as advertising and regulated as teleshopping, under the Television Advertising Standards Code (BCAP). The current BCAP rules cannot accommodate Adult or Psychic PTV content and have never been designed to do so.

However, following industry submissions to previous consultations Ofcom has conducted audience research and confirmed the popularity and lack of harm from such services and the fact that viewers are generally tolerant of their continued operation, subject to suitable safeguards. Ofcom will therefore propose changes to the TV Advertising Code (BCAP) which, in its current form, could not accommodate these services genres in teleshopping format.

## **Adult PTV**

Harvan Europe Ltd accepts the Ofcom determination that Adult PTV utilising PRS should operate within the teleshopping category under BCAP television advertising rules applied by the Advertising Standards Authority. Since the current BCAP rules cannot accommodate Adult PTV content it will be necessary for ASA to consult on proposed changes to BCAP and AIME agrees that such changes should generally follow the principles outlined by Ofcom in this Consultation but with the following provisos:

- Restrictions based upon the use of encryption technology are not appropriate since the required outcome of access control can adequately be achieved by using other, widely available, means and assisted by restricting programming to clearly labeled dedicated channels. AIME takes the fundamental view that regulation should be technology neutral and service based.
- Any restrictions directed against Freeview technology would effectively disadvantage Freeview against other set top box providers such as Sky and we do not believe this can be justified. A programming guide (EPG) can only be a contributor towards access control and a recent AIME survey, attached as Appendix 1, has confirmed that Freeview, which broadcasts to the majority of UK viewers, operates similar levels of parental controls as Sky and other boxes.
- Again, it is important that regulation be based upon technical neutrality by setting standards and not prescribing or preferring technical means. For this reason AIME believes it to be inappropriate to prescribe that all paid interactivity should be conducted using PRS. This is considered to be anti competitive towards alternate payment mechanisms and will inhibit the design and application of other methods of payment as appropriate for new services development.
- .Beyond granting an EPG license to Sky there is no history of Ofcom being responsible for mandating the generic organisation of channels in the Sky EPG )or any other platform including Virgin and more significantly Freeview

### **Consultation Questions**

Considering the questions as applying to the **Adult PTV** service genre.

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

#### **Answer 1**

Harvan Europe Ltd agrees with Ofcom's assessment of affected stakeholders together with its understanding of the industry and its operators when considering Adult PTV services but will consider Psychic TV services separately.

#### **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, and***
- a) that on the basis of options, 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 scheduling restrictions of 9pm to 5.30am and requirements for labeling and EPG position under option 4 offer appropriate protection for viewers?***

#### **Answer 2**

Harvan Europe Ltd agrees that changes to the existing rules are merited and that Option 4 offers the least impact on stakeholders but subject to the concerns raised earlier. Harvan Europe Ltd supports clearer labeling of services but we believe that EPG positioning is only one part of this exercise. Any stipulation requiring the use of encryption technology would not be technology neutral and is not supported.

#### **Question 3:**

- Do you agree with our analysis of the options available for regulation of the promotion of live personal psychic services, 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 labeling and EPG position provide appropriate protection for viewers?***

Harvan Europe Ltd does not provide Psychic Services but supports the position of AIME

**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)?***

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

**Answer 4**

Harvan Europe Ltd generally supports the suggested wording of proposed rules regarding Adult PTV but does not support any attempts by Ofcom to stipulate payment methods for the interactive broadcast services medium.

**Conclusions**

Harvan Europe Ltd is pleased to see Ofcom recognition that well established Adult and Psychic PTV programming has operated for many years in a responsible manner across various media and is well received by consumers. We accept the pragmatic view that in order to accommodate the European AMSD requirement to designate some services as teleshopping Ofcom will seek to amend TV advertising rules to enable consumers to continue to enjoy their participation TV experience.

Where restricted access to service content is sensible the Programming Guides (EPG) of set top boxes is a useful, though not exclusive, tool as an access control facility. However, any attempt by Ofcom to disadvantage one supplier over another through regulation because of programming display technology (e.g. Freeview versus Sky) would be unjust and anti competitive in addition to being unnecessary since most offer parental controls. As explained in our BCAP Consultation submission of June 2009 there are other, equally effective, ways of providing access controls to content and these are listed below:

- PIN (parental control on Freeview, Sky etc.)
- Credit card
- Subscription
- Mobile Age Verification
- 090 call blocking
- Watershed timing

Freeview broadcasts services to the majority of the population and any restriction of content would deprive many consumers access to services they will have enjoyed for many years which cannot be the purpose of fair and useful regulation.

Harvan believes it to be important that regulation be based upon technical neutrality by setting standards and not prescribing or preferring technical means and would therefore prefer Ofcom to avoid directing that all paid interactivity should be conducted using PRS.

Beyond granting an EPG license to Sky there is no history of Ofcom being responsible for mandating the generic organisation of channels in the Sky EPG )or any other platform including Virgin and more significantly Freeview



**Appendix 1**

**Freeview Access Controls**

	TV or Box	Brand	Model	Access Controls	Website
1	Box	Alba	CDVB4	Parental control/channel blocking	<a href="http://www.ricability-digitaltv.org.uk/pages/products/stbs/details.asp?Product=Alba%20CDVB4">http://www.ricability-digitaltv.org.uk/pages/products/stbs/details.asp?Product=Alba%20CDVB4</a>
2	Box	Argos	Value Range	Parental Controls for 'rated' programmes	<a href="http://www.ricability-digitaltv.org.uk/pages/products/stbs/details.asp?Product=Argos%20Value%20Range%20S TB101">http://www.ricability-digitaltv.org.uk/pages/products/stbs/details.asp?Product=Argos%20Value%20Range%20S TB101</a>
3	Box	BT Vision		Parental control/channel blocking	
4	Box	Bush	DFTA16	None	<a href="http://www.ricability-digitaltv.org.uk/pages/products/stbs/details.asp?Product=Bush%20DFTA16">http://www.ricability-digitaltv.org.uk/pages/products/stbs/details.asp?Product=Bush%20DFTA16</a>
5	Box	Bush	DFTA42FV	Parental control/channel blocking	<a href="http://shop.abc.net.au/browse/product.asp?productid=886224">http://shop.abc.net.au/browse/product.asp?productid=886224</a>
6	Box	Daewoo	DSD9430	Parental control/channel blocking	<a href="http://www.amazon.co.uk/Daewoo-DSD9430-Set-Top-Up-option/dp/B000ERVH4W">http://www.amazon.co.uk/Daewoo-DSD9430-Set-Top-Up-option/dp/B000ERVH4W</a>
7	Box	Daewoo	DSD9420	Parental control/channel blocking	<a href="http://cgi.ebay.co.uk/PHILIPS-DTR320-FREEVIEW-BOX---+UNIVERSAL-REMOTE-URC3920_W0QQitemZ260505934645QQcmdZViewItemQQimsxq20091113?IMSfp=TL091113175004r20008">http://cgi.ebay.co.uk/PHILIPS-DTR320-FREEVIEW-BOX---+UNIVERSAL-REMOTE-URC3920_W0QQitemZ260505934645QQcmdZViewItemQQimsxq20091113?IMSfp=TL091113175004r20008</a>
8	Box	Daewoo	DS700	Parental control/channel blocking	<a href="http://www.amazon.co.uk/Daewoo-DS700D-DS700-Freeview-Box/dp/B00076WG8G/ref=cm_cr_pr_product_top">http://www.amazon.co.uk/Daewoo-DS700D-DS700-Freeview-Box/dp/B00076WG8G/ref=cm_cr_pr_product_top</a>
9	Box	Daewoo	DSD800M	Parental control/channel blocking	<a href="http://uk.shopping.com/xPO-Daewoo-DSD800M">http://uk.shopping.com/xPO-Daewoo-DSD800M</a>
10	Box	Digihome	DV940B	Parental programme controls for user designated channels	<a href="http://www.ricability-digitaltv.org.uk/pages/products/stbs/details.asp?Product=Digihome%20DV940B">http://www.ricability-digitaltv.org.uk/pages/products/stbs/details.asp?Product=Digihome%20DV940B</a>
11	Box	Fetch	TV Smartbox 8000	Parental control/channel blocking on 'rated' material	<a href="http://www.ricability-digitaltv.org.uk/pages/products/digital_tvs/details.asp?Product=FetchTV%20SmartBox%208000">http://www.ricability-digitaltv.org.uk/pages/products/digital_tvs/details.asp?Product=FetchTV%20SmartBox%208000</a>
12	Box	Fortec Star	FS3100	Parental control/channel blocking	<a href="http://www.comparestoreprices.co.uk/set-top-boxes/fortec-star-fs3100--digital-freeview-set-top-box--fortec.asp">http://www.comparestoreprices.co.uk/set-top-boxes/fortec-star-fs3100--digital-freeview-set-top-box--fortec.asp</a>
13	Box	Goodmans	?	None	

14	Box	Goodmans	GDR9	Parental programme controls for user designated channels	<a href="http://www.ricability-digitaltv.org.uk/pages/products/stbs/details.asp?Product=Goodmans%20GDB9">http://www.ricability-digitaltv.org.uk/pages/products/stbs/details.asp?Product=Goodmans%20GDB9</a>
15	Box	Grundig	GUD 1500	Parental control/channel blocking	<a href="http://www.gogadgetoutlet.com/grundig-gud1500-freeview-set-top-box-53-p.asp">http://www.gogadgetoutlet.com/grundig-gud1500-freeview-set-top-box-53-p.asp</a>
16	Freesat Box	Humax	?	enables a user to set a password for live or recorded content, change the password and lock the set up menu.	
17	Box	Humax	PVR9300T	Parental Controls for 'rated' programmes	<a href="http://www.ricability-digitaltv.org.uk/pages/products/digital_tvs/details.asp?Product=Humax%20PVR-9300T/GB">http://www.ricability-digitaltv.org.uk/pages/products/digital_tvs/details.asp?Product=Humax%20PVR-9300T/GB</a>
18	Box	Humax	9150T	Parental Control	<a href="http://www.pocket-lint.com/review/3389/humax-pvr-9150t-freeview-pvr">http://www.pocket-lint.com/review/3389/humax-pvr-9150t-freeview-pvr</a>
19	Box	Humax	F2-FOX T	Parental Control for channels	<a href="http://www.ricability-digitaltv.org.uk/pages/products/stbs/details.asp?Product=Humax%20F2-FOX%20T">http://www.ricability-digitaltv.org.uk/pages/products/stbs/details.asp?Product=Humax%20F2-FOX%20T</a>
20	Box	Icecrypt	T5000	Parental Control for channels	<a href="http://www.turbosat.com/products/ICECRYPT-T5000-Digital-Freeview-Receiver.html">http://www.turbosat.com/products/ICECRYPT-T5000-Digital-Freeview-Receiver.html</a>
21	Box	Labgear	FV300	Channel locking capability	<a href="http://www.chsinteractive.co.uk/pdf_data/FV300.pdf">http://www.chsinteractive.co.uk/pdf_data/FV300.pdf</a>
22	Box	Labgear	FV400	None	<a href="http://www.ricability-digitaltv.org.uk/pages/products/stbs/details.asp?Product=Labgear%20FV400">http://www.ricability-digitaltv.org.uk/pages/products/stbs/details.asp?Product=Labgear%20FV400</a>
23	Box	Labgear	FV200	Parental Lock	<a href="http://www.chsinteractive.co.uk/pdf_data/FV200.pdf">http://www.chsinteractive.co.uk/pdf_data/FV200.pdf</a>
24	TV	LG	?	parental access controls.	
25	Integrated	LG	?	Parental control/channel blocking	
26	Box	Metronic	Digi SCART set top box	Parental control/channel blocking	<a href="http://www.metronic.com/pdf/fiche_produit/441816FP_UK.pdf">http://www.metronic.com/pdf/fiche_produit/441816FP_UK.pdf</a>
27	Box	Metronic	441802	Parental control/channel blocking	<a href="http://www.misco.co.uk/applications/SearchTools/item-details.asp?EdpNo=393133">http://www.misco.co.uk/applications/SearchTools/item-details.asp?EdpNo=393133</a>
28	Box	Metronic	441808	Parental control/channel blocking	<a href="http://www.amazon.co.uk/Metronic-441808-Digital-Freeview-Receiver/dp/B002USC11E">http://www.amazon.co.uk/Metronic-441808-Digital-Freeview-Receiver/dp/B002USC11E</a>
29	Box	Panasonic	DMR-EZ28	Parental control/channel blocking	<a href="http://www.dabs.com/products/panasonic-dmr-ez28-black-dvd-recorder-with-freeview-4ZGL.html">http://www.dabs.com/products/panasonic-dmr-ez28-black-dvd-recorder-with-freeview-4ZGL.html</a>
30	Box	Panasonic	TUCT41 DTV	Parental control/channel blocking	<a href="http://uk.shopping.com/xPO-Panasonic-Freeview-Digital-Converter-Box-7-Day-EPG-Silver-color-with-FREE-SCART-CABLE-TUCT41">http://uk.shopping.com/xPO-Panasonic-Freeview-Digital-Converter-Box-7-Day-EPG-Silver-color-with-FREE-SCART-CABLE-TUCT41</a>

31	Box	Philips	DTR220	Parental control/channel blocking	<a href="http://www.p4c.philips.com/files/d/dtr220_05/dtr220_05_pss_eng.pdf">http://www.p4c.philips.com/files/d/dtr220_05/dtr220_05_pss_eng.pdf</a>
32	TV	Philips	Flatscreen, 3 yrs old	Parental control/channel blocking	
33	TV	Pioneer	?	None	
34	Box	Proline	DVFDV17U	Parental programme controls for user designated channels	<a href="http://www.ricability-digitaltv.org.uk/pages/products/stbs/details.asp?Product=Proline%20DVFDV17U">http://www.ricability-digitaltv.org.uk/pages/products/stbs/details.asp?Product=Proline%20DVFDV17U</a>
35	Box	Samsung	SIRU200I	Parental control/channel blocking	<a href="http://www.amazon.co.uk/Samsung-Freeview-Digital-Set-Top/dp/B0000AZKQX">http://www.amazon.co.uk/Samsung-Freeview-Digital-Set-Top/dp/B0000AZKQX</a>
36	Box	Sagem	ITD 64	Parental control/channel blocking	<a href="http://www.ciao.co.uk/Sagem_ITD_64__6367034">http://www.ciao.co.uk/Sagem_ITD_64__6367034</a>
37	Box	SEG	CDST900	Parental control/channel blocking	<a href="http://www.excellentelectrics.co.uk/index.php?product_id=2008309&amp;option=Prod_detail">http://www.excellentelectrics.co.uk/index.php?product_id=2008309&amp;option=Prod_detail</a>
38	Box	Sharp	TU-TV502H	Parental control/channel blocking	<a href="http://www.ciao.co.uk/Productinformation/Sharp_TU_R162H__6968934">http://www.ciao.co.uk/Productinformation/Sharp_TU_R162H__6968934</a>
39	Integrated	Sony	?	Parental control/channel blocking	
40	TV	Sony	Bravia	None	
41	Box	Sony	RDRDC100B	Parental control/channel blocking	<a href="http://www.laskys.com/tv_and_dvd/dvd_and_blu_ray/dvd_hard_drive_recorders/sony_rdrdc100b_cek.html">http://www.laskys.com/tv_and_dvd/dvd_and_blu_ray/dvd_hard_drive_recorders/sony_rdrdc100b_cek.html</a>
42	Box	Sony	RDRDC205B	Parental control/channel blocking	<a href="http://www.laskys.com/tv_and_dvd/dvd_and_blu_ray/dvd_hard_drive_recorders/sony_rdrdc205b_cek.html">http://www.laskys.com/tv_and_dvd/dvd_and_blu_ray/dvd_hard_drive_recorders/sony_rdrdc205b_cek.html</a>
43	Box	Sony	VTX-D800U	Parental control/channel blocking	<a href="http://www.onino.co.uk/freeview_set_top_boxes/sony_vtx_d800u_digital_freeview_receiver.html">http://www.onino.co.uk/freeview_set_top_boxes/sony_vtx_d800u_digital_freeview_receiver.html</a>
44	TV	Tevion	?	ability to put channels behind a PIN	
45	Box	Thomson	DTI6021	Parental control/channel blocking	<a href="http://www.topuptv.com.preview.taglab.com/asset/get/4028efe822500f9e01225b0ba1900002/3674%20User%20Manual%20dti6021%20update%20T&amp;Cs_Layout%201.pdf">http://www.topuptv.com.preview.taglab.com/asset/get/4028efe822500f9e01225b0ba1900002/3674%20User%20Manual%20dti6021%20update%20T&amp;Cs_Layout%201.pdf</a>
46	Box	Thomson	DTI6300-25	Parental control/channel blocking	<a href="http://direct.tesco.com/q/R.207-0050.aspx">http://direct.tesco.com/q/R.207-0050.aspx</a>
47	Box	Topfield	TF5800 PVR	Parental control/channel blocking	<a href="http://www.dooyoo.co.uk/dvd-recorder/topfield-tf5800pvr/">http://www.dooyoo.co.uk/dvd-recorder/topfield-tf5800pvr/</a>
48	Box	TV onics	MFR-200	Parental control/channel blocking	<a href="http://www.tvonics.com/digital-set-top-boxes/mfr-200.html">http://www.tvonics.com/digital-set-top-boxes/mfr-200.html</a>

<b>49</b>	Box	TV onics	MDR-240	Parental control/channel blocking	<a href="http://www.tvonics.com/digital-set-top-boxes/mdr240.html">http://www.tvonics.com/digital-set-top-boxes/mdr240.html</a>
<b>50</b>	Box	TV onics	MDR-100	Parental control/channel blocking	<a href="http://www.tvonics.com/digital-set-top-boxes/mdr100.html">http://www.tvonics.com/digital-set-top-boxes/mdr100.html</a>

**Of 50 Freeview Boxes and TVs, 5 do not have parental control, 45 do.**

**Therefore, we can assume that 90% of freeview boxes and TVs have parental control**