

Please note our response to consultation.

We welcome the opportunity to respond to this Ofcom Broadcasting Code Review consultation. Our response answers questions 1 to 6 and 44 of this consultation on proposed changes to Section One of the Code in relation to the Sexual Material Rules.

In reviewing this Code, Ofcom is said to have taken account firstly, of “high profile compliance failings” (including sexual material); secondly, “pre-consultation discussions” with stakeholders (including broadcasters and representatives of consumer groups); thirdly, “consumer research” (in relation to commercial radio and in relation to sexual material); and fourthly, “legislative change”, in particular the European Commission Audio Visual Media Services (AVMS) Directive which must be implemented into UK legislation by 19th December 2009.<sup>1</sup>

The changes to the Code regarding sexual material that distinguish between strong sexual material requiring strong contextual justification and adult-sex material are said to be suggested for clarification purposes. However, in our opinion they actually weaken the Code and provide less protection for children and those under 18 years of age (hereafter referred to as “minors”).

The response to breaches of the Code and high-profile compliance failings should not be to weaken the Code by ‘clarifying’ it and relaxing the rules for strong sexual material, as this accommodates the industry, but does not assist the consumer. Instead, the appropriate response by Ofcom should be to clarify and strengthen the Code to prevent further breaches and to impose sanctions so that the industry is in no doubt that sanctions will be taken where necessary.

The primary aim of regulating the broadcasting of sexual material should be to protect children and minors. In order to provide adequate protection for children and minors, both strong sexual material and adult-sex material should not be broadcast and should be reserved for adult channels that have mandatory access restrictions such as encryption and pin codes. It would appear that the legislation both here and in the AVMS Directive provide support for this approach.

It appears illogical for Ofcom to be suggesting additional rules that would allow the broadcasting of “strong” sexual material after the watershed, whilst retaining the current rules (rule 1.22)<sup>2</sup> that disallow such material in BBFC 153 films in order to protect children. Strong sexual material should always require restricted access rules. The guidance on BBFC 15 ratings indicates that strong sexual material would not be included in such films as “strong detail” is not allowed, so it should not be allowed after the watershed either, as children are not prevented from watching television after that time unless their parents are aware of the dangers and are conscientious.

We do not agree with Ofcom’s proposed changes to the sexual material code and believe that they should be weighted in favour of the important objective of protecting minors rather than facilitating the commercial aims of those who wish to broadcast potentially harmful material.

Ofcom have stated that one of the matters that particularly required consideration in reviewing the Code, was the degree of harm or offence likely to be caused by the inclusion of any particular sort of material.<sup>4</sup> In our opinion, Ofcom have failed to have “particular regard”

to the aforementioned objective in the proposed revision of this Code, to the detriment of the need to protect minors.

The Code should be strengthened, both in the “sexual material” and in the “harm and offence” sections. A much more precautionous approach should be taken, with the emphasis being upon proving that harm is not likely to result from material shown, rather than allowing for excuses such as “editorial justification”.

The harmful influence upon minors of watching television programmes that feature sex scenes cannot be underestimated. The vulnerable and impressionable young mind requires the protection of the Code. For example, a study found that teens who watch Sex in the City are more likely to get pregnant.<sup>5</sup>

Efforts to combat the rising levels of teenage pregnancies<sup>6</sup>, abortions<sup>7</sup> and sexually transmitted diseases<sup>8</sup> may do well to concentrate upon the removal of programmes that feature sex scenes and thus glamorise sexual activity in the perception of impressionable and vulnerable teenagers. Code revisions regarding sexual material in programmes and programme content could prevent this from happening.

Ofcom proposes in this Consultation to introduce new Code rules on Public Information Programming, which is described in the Consultation as “programming which has as its purpose a public interest benefit”. It may be funded only by a non-commercial, not-for-profit entity. The consultation gives as examples of matters in the public interest in this context: public health or safety, crime detection/ prevention and education. We have answered the recent BCAP Code Review Consultation by saying that we would strongly oppose the advertising of abortion on television (please see link).<sup>9</sup> For the same reasons as specified there, we would strongly oppose any Public Information Programming for either radio or television regarding abortion, which abortion sponsors could use to promote such clinics contrary to the strongly-held religious beliefs of so many people in this country. In addition, we consider programming regarding abortion to be a highly controversial and political area that should be banned in the same way that there are rules to prevent political advertising. The Code and guidance notes should make this absolutely clear. This type of coverage should not be brought in “through the back door” by exploiting new Public Information Programming rules.