

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Broadcasting Code Review

To (Ofcom contact): Sara Winter

Name of respondent: Mrs Pippa Smith and Mrs Miranda Suit

Representing (self or organisation/s): mediamarch

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input checked="" type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

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Name

Signed (if hard copy)

Ofcom Broadcasting Code Review

Consultation questions

Sexual Material Rules (Code Section One)

[This is the full mediamarch response](#)

Closing date: 5pm Friday 4th September 2009

Question 1

- a) **Do you consider that the rule in relation to 'adult-sex' material needs to be clarified?**
- b) **Do you agree with our proposed amendments to the rule on 'adult-sex' material (Proposed Rule 1.18 to replace Rule 1.24)?**
- c) **If you do not agree with our proposed amendments, please explain why and suggest alternative wording where appropriate.**

- a) Clarification is to be welcomed, however we are unsure how many members of the public will be aware of or understand this (fine) distinction.
- b) We do not agree with all the proposed amendments.
- c) We do not agree with such material being broadcast at any time. Adult sex (porn) is bad for adults. It is addictive, it impacts negatively on relationships and marriages and can (in extreme cases) lead to sexual crime, in particular rape. *(meta-analysis of published research on effects of pornography, E Oddone-Paolucci. M Genuis & C Violato, Calgary University, pub. Medicine, Mind and Adolescents '97) This meta-analysis of 46 previous studies (from 1969 to 1995) including 12,323 people, dealt with 'mild pornography', (nudes, persons engaging in petting and non-violent acts of sexual intercourse without genitalia visible); 'erotica or explicit porn' (consensual non-violent sexual acts with genitalia visible); and 'violent porn' (depictions of rape, degradation, sexual aggression or sadism). It concluded "The results are clear and consistent; exposure to pornographic material puts on sat an increased risk for developing sexually deviant tendencies, committing sexual offences, experiencing difficulties in one's intimate relationships, and accepting the rape myth (that women enjoy rape and that rapists are normal)...The rise in sexual crimes, sexual dysfunction and family breakdown may be linked to increased availability and use of porn)".*

Question 2

- a) **Do you consider that the introduction of a new rule in relation to material of a strong sexual nature is appropriate?**
- b) **Do you agree with our proposed rule on material of a strong sexual nature (proposed Rule 1.19)?**
- c) **If you do not agree with our proposed new rule, please explain why and suggest alternative wording where appropriate.**

- a) Yes but b) not in the way it is here.

c) Your proposal may be appropriate to clarify terms for the industry. However, so-called 'strong sexual material' can also arouse sexually even if that is not the primary purpose. The watershed is irrelevant now given the nature of convergence, and such material being shown after the 9.00 pm watershed will be easily accessible to children, the majority of whom watch after 9.00pm and have televisions and other electronic communications technology in their bedrooms.

We are concerned that Ofcom believes sexual material can be shown earlier (pre-watershed) 'if appropriately limited' (who decides what's appropriate?) and 'editorially justified'. Research shows that discussion or images of sex, genitals etc, whether 'informative and educational', for 'art' or whatever other phrase used in justification, does lead to children having sex earlier.

(Report by Jane Brown of University of California 1996, extracts published in 'Paediatrics and in The Journal of Adolescent Health)

Question: Ofcom deems 'children' to be under 15 years. The BBFC defines them as under 18 years, the year of majority. There is a discrepancy. Given the age of consent is 16, we do not understand why it is considered appropriate to show sexual material to highly impressionable under 16's (as the BBFC sees fit to do also).

Question 3

- a) Do you consider that the rule in relation to material equivalent to the BBFC R-18 rating needs to be separated from the rule in relation to R-18 rated works?**
- b) Do you agree with our proposed rule on material equivalent to the BBFC R-18 rating (proposed Rule 1.17)?**
- c) If you do not agree with our proposed new rule, please explain why and suggest alternative wording where appropriate.**

- a) No.
- b) We prefer 'mandatory access restriction' but believe this material should not be available at all for the reasons above.

Question: Why has material equivalent to R18 material not already been classified as R18? It should not be separated from the rule in relation to BBFC R18 rated works. However, it is important to note that material that was BBFC classified R18 is now being classified at 18 e.g. real (hardcore) sex and sexual violence, mutilation etc. The BBFC is, except in the most hideously extreme cases, now leaving it up to adults to make up their own minds about what they will watch. This laissez faire approach will impact on what is shown by broadcasters post-watershed and it will therefore impact on children and vulnerable adults, and society. Despite the legislation on selling R18 and 18 material, currently in question, such DVDs etc are bought by people aged 18 and over and supplied to children. It is a FACT that some of this material, once sold, is circulating among under-age children. The internet provides the greatest ease of access to inappropriate material, therefore it is vitally important that BBFC classification is strengthened and made more publicly accountable, in order to dramatically reduce violent and sexual content. This would be helpful to Ofcom.

Question 4

- a) Do you consider that the rule in relation to pre-watershed material needs to be clarified?**

b) Do you agree with our proposed amendments to the rule on pre-watershed material (proposed Rule 1.20 to replace Rule 1.17)?

c) If you do not agree with our proposed amendments, please explain why and suggest alternative wording where appropriate.

- a) Yes.
- b) No
- c) Sexual material cannot in any way be justified pre-watershed, in just the same way it is not necessary, desirable or justified post-watershed (given research evidence of its harmful effects).

Question 5

a) Do you consider that the associated revisions are appropriate following the other rule revisions outlined above?

b) Do you agree with our proposed associated revisions in Section One?

c) If you do not agree with our proposed revisions, please explain why and suggest alternative wording where appropriate.

- a) No
- b) No
- c) We do not think the proposed revisions to the Code will improve protection to consumers and citizens. We recommend a more clearly-defined Code and base this recommendation on the following points: The Code is too vague and has far too many opt outs. It does not offer greater clarity because it is still too ill-defined. It appears to give the green light to broadcasters who have a whole armoury of ambiguous wording to justify the sexual material they include. For example:
 - Unless (strong) editorial justification. This lays a disproportionate amount of discretion on editors who have to base their judgements on this ill-defined Code.
 - Justified by means of context. This little but highly significant word regularly provides producers with any number of excuses, including other vague terms such as: likely, degree, extent, potential etc. This may be useful to broadcasters under pressure for ratings, who want to include material that pushes the boundaries, but how many members of the public will trawl through the list to decide if context is a valid reason to watch something questionable.
 - Must generally be avoided/should not in general, be shown before w'shed. This is so 'generally' vague i.e. it may not be avoided/could be shown..... How do parents, if they ever dip into the Code, discover what is or is not allowed.
- When children are particularly likely to be listening. Everyone knows that with modern information technology they could be listening/watching at ANY time.
- Adult material. The word 'adult' in media terminology has come to mean a time of life when anything goes. Not all people over 18 want to be associated with this (de)meaning of the word – an age when obscenity is apparently acceptable and becoming an adult automatically ushers in immorality.
- Strong sex/language. Strong is a vague word in this context – more often than not its normal use has positive connotations. However in media speak it is being associated with bad/obscene language/behaviour. Why not use more precise and descriptive terms eg swearing, bad language, obscene language. Strong sex leaves us none the wiser as to what this means – sex between strong people/simulated sex that looks real/real sex without the genitals visible/soft porn?

- Appropriate scheduling. As with context above, another list to consider which lays a disproportionate burden on parents (as well as causing offence to older viewers and listeners).

The Code Review continues this ill-definition...

- How does Ofcom decide the 'degree' of harm or offence likely to be caused? * Please see our separate note re audience research at 6(b) below.
- If people are culpable for stumbling across material they don't like, ("by their own actions") does this mean all the burden of responsibility is on the viewer?
- The desirability of maintaining the independence of editorial control over programming content – this begs the question again about guidance, accountability and integrity of editorial control given the ill-defined tool which is the Code.
- Likely expectations of the audience. Titles of programmes and warnings of 'potentially offensive' content are not adequate protection. Indeed they often bring such material to the attention of children who are naturally curious.

We would also like to note that the rapid introduction of modern 'must have' communications technology is undermining parental authority. This makes warnings and labelling virtually useless. Parents cannot cope and media literacy is meaningless to a great many struggling one parent families.

Question 6

a) Do you wish to suggest an alternative approach to the proposed set of rules in relation to sexual material? If so, please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003 and the European Convention on Human Rights).

- a) We propose a simple answer: clear-cut rules which would allow producers to work within a well-defined framework and thereby reduce the risk of inappropriate material being screened in the first place. 'Light touch' regulation came about as a result of the realisation that internet and convergence posed complicated difficulties for content regulation, and for expediency this has ushered in an era of greater libertarianism and latitude which has benefited the industry (echoes here of Rupert Murdoch's call for "unbridled freedom for the media"). It has also gradually desensitised the population, so adherence to 'generally accepted standards' as a means of setting the yardstick is false*. There should also be a system whereby controversial programmes can be pre-viewed before being aired.
- b) *The approach to Impact Assessment is flawed. While consumer research has its value, it is not enough on its own (see comments in (a) above). Independent scientific research evidence should also be provided/acknowledged that shows the effects of sexual material on viewers.

The European Convention on Human Rights, Article 10, is quite clear that freedom of expression has duties and responsibilities and may be subject to ... conditions, restrictions etc. (The ECHR does not specifically mention compliance with Ofcom's Broadcasting Code as part of the Article) This must be the more so when exercised by powerful media organisations. There must be a shift towards those organisations bearing the responsibility for proving their output is NOT harmful BEFORE letting it loose on society.

For example, “virtually no studies are reported which show that the posited harmful examples lead to varieties of reflective, positive behaviour”.

The balance of freedom of expression and the **competing** duty for adequate protection should always favour protection. This is not the case at present and never will be unless Ofcom is prepared to put public duty before the wishes of the industry. This has become urgent given the rapid increase in under-age sex (with concomitant rise in teenage abortions and STD’s), juvenile violence and anti-social behaviour, and the fear that is created as a result of media driven public perception.

We question the way Ofcom is funded and believe this is an important issue to be addressed. There needs to be a balance in favour of public money being used to fund this regulatory role, possibly from the licence fee, which would give greater accountability to the public. This would require a tightening of Ofcom’s remit, including a lessening of the commercial facilitatory role. One of the problems that has arisen is that there are so many channels licensed, and competition has grown to such an extent, they are collectively undermining the ability of all broadcasters to raise funds for quality content production. Of particular concern is the undermining of commercial channels with a public service broadcasting remit.

Question 44

a) Do you agree with the proposed approach which only proposes changes to Section One of the Code in relation to material of a sexual nature; only proposes changes to Section Two in relation to Competitions and Voting; and proposes no changes to Sections Three to Eight.

b) If you do not agree with our approach, please explain which other sections of the Code you consider should be reviewed and why.

c) Do you agree with Ofcom’s approach which will be to provide, and update, guidance to all sections on an on-going basis? If so, are there particular areas where you consider an updating of guidance would be helpful?

a) No

b) We believe all Section 2 Harm and Offence should be reviewed also.

c) We would welcome updating of the guidance, but providing “non-binding assistance for producers to interpret and apply the Code” will not be helpful in “the exercise of effective control”. It will still require subjective judgements to be made because the Code is basically faulty.

As well as sexual material, there is a need to review the Code on the portrayal of violent and anti-social behaviour, including bad language and drug taking. A mass of research evidence exists to show the link with harm.

2.12 Broadcasters must not use techniques which exploit the possibility of conveying

A message to viewers or listeners, or of otherwise influencing their minds without them being aware, or fully aware, of what has occurred.

This is precisely what broadcast media is all about. Young people's minds are easily influenced by what they see and hear without them being aware.

Techniques are already employed to encourage viewers to stay in front of the screen for example, particularly in advertising: fast moving, excitement, cuts, edits, zooms, cartoons. All of these are used to keep interest alive so viewers want to remain glued to the screen. Little space is allowed for quiet reflection.

Section Three Crime

3.1 Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services.

Much greater care should be taken by broadcasters relating to violent, sexual and anti-social behaviour content. "The hit first, ask questions later" attitude in movies and video games was being copied by youngsters and feeding into the knife crime epidemic", according to Prof Kevin Browne of Nottingham University

The Code should clearly define at 3.1 what is and is not acceptable content.

The Home Affairs Committee Report on Knife Crime (June 2009) gives official recognition to the power of violent media. It states:

"Causes of Knife Crime, para 88. Evidence to our inquiry supported our view that violent DVDs and video games exert a negative influence on those who watch and play them. Watching or playing such media contributes around 10% of any person's predisposition to be violent. Of particular concern is their influence on individuals who are already predisposed to violence because they grew up in a violent environment."

Recommendations, para 43. We were disturbed to learn that young offenders who are convicted for violent offences are allowed to watch violent DVD and video games in secure units and young offending institutions, given that they may increase the risk of violent behaviour in those already predisposed to violence. We recommend that the Ministry of Justice institute a ban on this kind of material."

Content in Soaps can also be unsafe. For example, a recent irresponsible episode of Emmerdale showing children setting fire to hay, at this time of year, outraged farmers who feared this could set off copy cat behaviour.