



PromoVeritas Response to Ofcom Consultation Participation TV Part 2

Q1. Do you have any comments on the drafting of the proposed amendments to the Broadcasting Code set out in Section 4? Please provide drafting suggestions where appropriate.

It is clear that Ofcom feel strongly that certain types of programmes have no place on television. This is despite the fact that services similar to those offered in these type of programmes are widely available in magazines, the internet and elsewhere, often with little or no control or effective regulation.

That said, we are broadly in agreement with the proposals in Section 4, believing that they will provide an adequate framework for regulation of these services. They will clear out the unwelcome and require the more legitimate programmers to tighten up their acts and review the meaning behind their interactive plans.

However we do have some comments on the draft clauses :

10.9 Where a broadcaster invites viewers or listeners to take part in or otherwise interact with its programmes, it may only charge for such participation or interaction by means of premium rate telephone services or other telephony services based on similar revenue sharing arrangements.

This seems to disallow the use of a regular priced text or phone number eg 0207, as the rule states “ **may only** charge....premium rate,.....or similar revenue sharing arrangements”. An 0207 number has no revenue sharing and is not premium so meets neither criteria. This seems at odds with a desire to enable maximum participation for minimum cost.

Premium rate numbers

10.9 10.10 Premium rate numbers services, and other telephony services based on similar revenue-sharing arrangements, will normally be regarded as products or services, and must therefore not appear in programmes, except where:

- *they form part of or are both directly derived from a particular programme and enable viewers or listeners to participate directly in or contribute directly to the editorial content of the programme;*

This would appear to disallow the sort of question that is now used on air but actually follows the programme and asks a question related to that show. Generally the timing of it may be outside of the programme timing and the interaction does not affect the editorial of the programme. An example would be Five and their weekly questions

PromoVeritas Ltd

T : 020 7060 0232

W : www.promoveritas.com

E : info@PromoVeritas.com

about CSI. Would this now not be allowed – if so we believe that this is an unreasonable and unwelcome consequence of this clause

10.10 10.12 Any use of premium rate numbers or services must comply with the Code of Practice issued by the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS) PhonepayPlus.

But what if the programme uses a number that falls outside of the remit for PhonePayPlus – that is say a 15p BT pricing point. There is then no obligation for it to operate to the PhonePayPlus codes, nor any from Ofcom, and being most likely editorial, they are also exempt from BCAP ?

In addition we need to raise the whole issue of transparency of pricing because even if services conform to all in these proposals there is still a risk of viewers being confused or deceived by pricing information broadcast. Thus a 15p BT price may actually cost 75p on certain mobile networks and there is currently no obligation on the part of broadcasters to provide this information and no standard for those that wish to do so. Nor is this covered by PhonePayPlus rules or any other.

Also the operation behind the phone service needs to be legal and fair. It is very worrying that there is no mention of the Gambling Act in this consultation nor of the rules contained with CAP for the implementation of prize draws and competition.

This Gambling Act provides a useful separation between games of chance and games of skill or judgement.

The former, if they involve payment (eg via a premium rate call, but not via a regular rate phone or text which is not regarded as payment) and distribute prizes via random selection, will require a Gaming licence. Competitions however may distribute prizes and may charge for entry (any amount) butt the distribution of prizes must be on the basis of a level of skill or judgement such that it is likely to either put a significant proportion of potential audience off from entering, or of those that do a significant proportion will get it wrong / not be winners.

Activities that may meet the proposed Ofcom rules could easily fall foul of this skill test, especially the commonly used multiple choice questions with three options, two of which tend to be obviously wrong. Greater clarity and at least a reference to these statutory laws would be of great benefit.

PromoVeritas Ltd

T : 020 7060 0232

W : www.promoveritas.com

E : info@PromoVeritas.com

Q2. Do you have any comments on the draft explanatory guidance set out in Section 4? Please provide drafting suggestions where appropriate.

Rule 10.9

Where broadcasters choose to charge viewers or listeners for participation in programmes over and above the normal costs of communication, e.g. ordinary post or standard telephony, then the only permitted means of charging for participation is by PRS (including via the red button) or similar telephony applications, e.g. 0870 and 0871 services.

Other methods of payment, such as by credit card or via a special account, are acceptable only where viewers or listeners are buying programme-related material, e.g. a DVD, not where they are seeking to participate in or otherwise interact with a programme.

Does this "special account" rule out payments via a scheme such as Paypal ? What about schemes that sell an item, say a magazine for a price, that might be inflated so as to cover some form of pre-payment for PRS interactivity for a given period of time. So say pay £10 for the magazine, which happens to include a code number enabling one to enter a TV related activity 5 times. The magazine is the saleable item, and so likely to meet the requirements of the regulations, but there is mischief in the addition of the extra elements.

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Q3. Do you agree that the proposed rules should apply to radio as well as to television?

Yes we see that radio faces similar issues, and if radio is not covered there could be some migration of the prescribed services from TV to Radio. In addition due the inability to provide subtitles and on screen data, the quality of information available to radio listeners can be particularly bad.

A further point to note is our increasing concern regarding the "back end" processes within radio stations to ensure fair winner selection. Winners are often selected on the basis of the sound of their voice, their enthusiasm or their location as much as their ability to answer the question. There is also frequent use of "we will pick caller on line 106 (or whatever to tie in with the radio's frequency)" is all too often a sham as the station will only have a couple of phone lines.

Jeremy Stern
Managing Director

PromoVeritas Ltd

T : 020 7060 0232

W : www.promoveritas.com

E : info@PromoVeritas.com