

GUIDANCE TO BROADCASTERS ON THE REGULATION OF INTERACTIVE TELEVISION SERVICES

Guidance to Broadcasters on the Regulation of Interactive Television Services

Foreword

The Guidance to Broadcasters on the Regulation of Interactive Television Services should be read alongside the BCAP Television Advertising Standards Code. Together, the Code and the Guidance set out the rules that govern advertisements on any television channel licensed by Ofcom. The rules are framed to ensure that advertisements are 'legal, decent, honest and truthful' and do not mislead or cause harm or serious or widespread offence.

From 1 November 2004, the Code and the Guidance will be the responsibility of the Broadcast Committee of Advertising Practice (BCAP), under contract from the broadcasting and telecommunications regulator Ofcom.

More information is available on the BCAP section of the Committee of Advertising Practice website, www.cap.org.uk.

Ofcom took over the responsibilities of the former Independent Television Commission (ITC) in December 2003. Under the Communications Act 2003, Ofcom was encouraged towards contracting-out functions to a co-regulatory partnership with effective self-regulation.

After public consultation and parliamentary approval, Ofcom has authorised BCAP to take responsibility for maintaining, reviewing and updating the Code.

Complaints about apparent breaches of the Code will be considered by the Advertising Standards Authority, through its broadcasting arm ASA(B). Complaints to the ASA can be made via www.asa.org.uk.

The Guidance is published unamended from the text issued by the former ITC in February 2001 and has been agreed with Ofcom in 2004.

References to the ITC have been reviewed and changed, where necessary, to BCAP, Ofcom or the ASA.

This Guidance does not extend to Information Society services as defined by Directive 98/34/EC (as amended).

1. This document sets out the policy of the Independent Television Commission, and presently followed by Ofcom, towards the regulation of interactive television services. It is designed to provide guidance to licensees, and should be read alongside the existing rules for the regulation of content, and in particular the Programme Code, the Advertising Code and the Rules on the Amount and Scheduling of Advertising. It is organised into the following sections: -

1. Background
2. Definition of interactive services
3. The ITC's general approach
4. Dedicated interactive ('shopping mall') services
5. Enhanced programming

Background

2. The ITC conducted an in-depth consultation on the regulation of interactive television services during the course of 2000. This generated a total of 32 responses, some very detailed. The ITC also engaged in a series of bilateral discussions with interested parties. Almost all the participants recognised the complexity of the issues, and the fast-moving nature of the market place. There was also a general recognition of the importance of ensuring that regulatory burdens on this new and important market should be as light as possible. But many respondents also highlighted the need to ensure that the existing protection of viewers of linear television services – especially in relation to the separation of commercial content from programmes, and the protection of children – remains adequately safeguarded.

Definition of Interactive Services

4. Interactivity is a functionality rather than a specific type of service, and it can be applied in a wide variety of contexts. Its distinguishing characteristic is the ability of viewers to interact with TV programmes by one of two methods:

- * by changing the content which appears on the screen – for example to access background information, to change camera angles, to view more than one picture at a time, or to view associated text at the same time as a main picture;

- * by providing information to the broadcaster through a return path, usually a telephone line – for example to order a product, to exercise ‘votes’ on options provided by a programme or to participate in an on-screen quiz show.

These services are available only to members of the public with digital equipment, whether satellite, cable or digital terrestrial. A range of interactive services is now being provided to the public by broadcasters using both of these types of interactivity, although many projects are still at the pilot stage.

5. A separate but related development has been the growth of Internet-via-TV services. These provide access to the full World Wide Web rather than to content moderated by the broadcaster – such web access is not normally edited, except to the extent necessary to make text legible on a TV screen. This kind of service uses the TV essentially as a computer screen, in connection with a set-top box providing a function similar to a PC. The ITC had made it clear that it does not intend to regulate the Internet, however viewers get access to it, and pure Internet-via-TV services lie outside the scope of this policy statement.

The ITC’s general approach to interactive TV services

6. Interactive TV services differ substantially from the Internet – in that they are provided in the context of TV programmes and content put out by familiar broadcasting organisations. This is an environment in which the viewer has considerable trust, underpinned by well-developed and widely respected standards for all forms of content. This trust is important to broadcasters and advertisers, as well as to viewers.

7. The ITC takes as its starting point the need to continue to study and understand the interactive services market in its own right, through a combination of:

- * close monitoring of market developments
- * the establishment of a forum for ongoing discussion with licensees on all the main issues
- * research into viewers’ experience of, and reactions to, interactive television services, where appropriate in co-operation with the interested parties.

Each of these activities will help to inform Ofcom’s continuing review of the public policy and viewer protection issues.

8. In the shorter term, the ITC is aware of the need for general guidance for licensees and advertisers. It bases its approach on three general principles:

I. Viewers have a major interest in the development of a dynamic and innovative market in interactive services.

Regulation must not impose unnecessary costs or restraints, and must be confined to dealing with clear viewer detriments. In no circumstances should the financial or opportunity cost of regulation be allowed to outweigh the benefits.

II. We should build on existing audience expectations.

Where content comes unbidden into the home as part of a linear TV service, viewers do not make active choices other than which channel to watch – and they make no active choices at all about advertising which by its nature is unscheduled from the viewer's perspective. Viewers' reactions are based on a clear set of expectations about the level of protection provided by the current system.

By contrast, where viewers are 'pulling' content, having chosen an interactive option, they are by definition exercising control over it. Their expectations, as a result, can be different.

III. The current distinction between programmes and advertising is important to viewers and should be safeguarded.

Viewers need to be clear when they are being sold to, and TV programmes should be free of commercial interference. This applies to all programmes, but special safeguards are applied to news, current affairs, consumer advice and children's programmes. Interactivity may well provide valuable and welcome enhancements to programmes; but it must not prejudice the fundamental principle of separation of programmes from advertising.

9. Taken together, these principles suggest that the potential detriments faced by viewers of interactive services are modest, and that the ITC's overall approach should be a light touch one. It would not in any circumstances be appropriate to develop 'new regulation' for interactive services – the main need is to identify which elements of existing content regulation should be retained for the interactive environment, and which can be disapplied. The ITC's main regulatory concerns focus on principle III – ie to ensure that viewers are clear about what kind of environment they are in, and that programme integrity is effectively maintained.

10. The remaining sections of this paper set out how this general approach will be applied to the major types of interactive service which have so far been developed. These fall into two main categories – dedicated interactive services, and enhanced programming.

Dedicated interactive services

11. These are services accessed in their own right, usually through an electronic programme guide. Typically they consist of electronic ‘shopping malls’ and entertainment services such as betting and gaming. Their content is not usually linked to specific programmes. Some of these services operate entirely within a ‘walled garden’ controlled by the broadcaster; others may be linked to a form of full Internet access.

12. Viewer detriments can arise from any content on these services which is misleading, offensive or harmful. These are similar to the detriments which can arise from linear services, including teleshopping channels. What is more difficult to assess is the level of protection viewers expect in the dedicated interactive environment. It is reasonable to suppose that it will be rather less than with linear services, given the newness and non-universality of dedicated services, and given the level of deliberate choice required to use them. The ITC has not been aware of any significant problem in the early stages of development of these services, but this is an area that will require further research as the market develops.

13. Ofcom’s regulatory approach to this area also needs to be closely informed by practicalities, and it was clear from the consultation exercise that it would be inappropriate to take on any kind of commitment to regulate the detailed content provided through dedicated interactive services, even where these operate within a broadcaster’s ‘walled garden’. As the market has developed, it has become increasingly difficult to distinguish between interactive material chosen by viewers from within a ‘walled garden’ and material from the generality of the Internet, and there are risks of distorting the market between the two types of service. One to one transactions, meanwhile, are matters for trading standards officers and the Courts, supplemented by whatever mechanisms traders may choose to establish.

14. The ITC proposes to set just two requirements in this area:

*** Broadcasters’ own content**

Where broadcasters provide content of their own, eg as part of a portal to an Electronic High Street, this lies clearly within their responsibility

and control. Such content falls within the scope of an Ofcom licence, and will be expected to conform to Ofcom content rules. Pre-vetting may not be appropriate or practicable, but Ofcom would expect that any material it considers misleading, offensive or harmful should be removed on notification.

*** Transparency of different types of content**

Viewers must not be misled about the regulatory regime that applies to any interactive/internet content they may access, for example they must not believe it is subject to Ofcom or BCAP Codes when it is not

15. In addition, there may be circumstances where a content provider on a dedicated service provides programming – an example could be a supermarket chain providing a cookery programme for users of an electronic shopping mall. Such content providers would be licensees in the same way as conventional TV companies, and would thus be subject to Ofcom licensing requirements.

16. Beyond these requirements, the ITC does not propose to set any standards for content on dedicated interactive services, including ‘walled gardens’. Ofcom, BCAP and the ASA will communicate informally to licensees any major content problems brought to our attention, but it will be for broadcasters, advertisers and other providers to decide how best to respond.

Enhanced programme services

17. These are services which provide for interaction with a linear programme. There are three main cases:

*** Editorial enhancements to programmes**

These arise where non-commercial content such as background to news, sports events or dramas is accessed from the programme concerned.

*** Advertising enhancements to programmes**

These arise where commercial material is accessed, either directly or indirectly, from a linear programme, eg for goods or services related to the editorial content. They can be combined with editorial

enhancements for example where viewers are given access in the first instance to screens offering a combination of editorial material and banner ads.

*** Advertising enhancements to advertisements**

These are enhancements accessed through an advertisement (or a sponsorship credit), eg to get more information about a product or where to buy it.

18. Because these enhancements start from conventional linear programmes, viewer expectations may be rather different from those applying to dedicated interactive services. The decision to interact will usually have been made after the decision to watch the programme, so the viewer may well regard the interactivity as an extension of the programme. Also, accessing the interactivity is likely to involve fewer viewer deliberate choices which may increase the expectation of a level of protection closer to that in the linear environment. There are also significant concerns – widely recognised by respondents to our consultation – about the possible impact of interactive services on the integrity of linear programmes, for example if commercial content is entirely unchecked. The ITC agrees with these concerns, and in general sees no persuasive argument that the protection of programme integrity is any less important in the interactive environment than in the linear one.

19. At the same time, there is no dispute that some degree of commercial exploitation of links with programmes will be needed if the costs of providing interactive enhancements are to be met.

20. The ITC has concluded that these two apparently conflicting considerations can be reconciled through the establishment of a set of simplified ground rules based on elements of our existing Codes. These rules are set out in full at Annex A. The main features fall under three headings:

*** Licensees' general responsibility**

Licensees are already required under the Programmes and Advertising Codes to ensure that material they transmit complies with Code requirements. The ITC sees these requirements as extending to all enhancements over which the licensee exercises control, and to any interactive icons present in a programme or advertisement.

*** Viewer transparency**

Licensees will not be expected to take responsibility for material over which they have no editorial control, but differences of status must be

transparent to viewers. For example, viewers must be told any costs of choosing to interact (eg telephone calls).

*** Commercial content linked to programmes**

Ofcom's Programme Code prevents undue prominence of products appearing in programmes, and parallel concerns arise with interactive enhancements. Interactive icons themselves should not be branded, and should not be used in a way that encourages undue prominence of a product appearing in a linear programme.

BCAP sets specific requirements in its Advertising Code on the separation of advertisements from programmes. In the interactive environment, the ITC requires three analogous forms of separation.

The first is to prevent viewers from proceeding straight from a programme to a single advertisement – the ITC does not see the choice to interact as being the same as the choice to receive advertising or offers for sale. An intermediate 'first click' screen should offer at least some non-commercial material, as well as links to commercial content if appropriate.

The second form of separation is transparency of advertising content – advertising material should be distinguishable as such. This applies in the interactive environment just as it applies to the linear one.

The third form of separation is between specific categories of programmes and specific advertisements. In the linear environment, Ofcom sets a number of rules limiting for example the appearance of programme presenters in advertisements adjacent to the programme concerned. These restrictions apply also to interactive advertising content accessed through such programmes.

21. In addition, Ofcom has set more specific requirements for interactive enhancements to three especially sensitive categories of programme – news and current affairs, consumer advice programmes, and children's programmes. Again, these mirror closely the existing rules for linear programmes.

*** News and current affairs**

No interactive advertisements should be provided for products or services referred to in the relevant section of a news or current affairs programme, and there should be no interactive ads of any kind providing offers for sale.

*** Consumer advice programmes**

No direct offers for sale may be made for products or services reviewed in a consumer advice programme.

*** Children's programmes**

Existing restrictions on advertising within children's programmes in the linear environment (eg of alcohol, slimming products, medicines, adult films and also of offers for sale of any kind) also apply in the interactive environment.

**Ofcom
November 2004**

Annex A

Rules for interactive enhanced programme services.

This Annex sets out the rules Ofcom expects licensees to follow in providing interactive enhancements to programme services. These rules are based on analogous requirements in Ofcom's codes for the content of linear services, and are designed to protect programme integrity.

Any method of indicating that interactivity is available is referred to here as an "interactive icon".

Licensees' general responsibility.

- 1 The Ofcom licensee is required to retain full editorial responsibility**
 - (a) for any interactive icons the licensee has caused to be present during the course of editorial programmes;**
 - (b) for all editorial programme enhancements, whether on initial or subsequent enhancement screens;**

(c) for all advertising contained on the first screen accessed after the first choice to interact; and

(d) for all screens containing enhancements – whether advertising or editorial programming – over which they exercise control.

Note:

The ITC takes the view that advertising exposed as a direct result of choosing programme enhancement material has not been requested by the viewer and so is the equivalent of advertisements appearing during linear programmes. This ‘first click’ content is therefore subject to the same compliance requirements as an advertisement in the breaks in linear programmes. Beyond the ‘first click’, this rule applies only to content clearly designed as a programme enhancement and within the licensee’s own control.

Viewer Transparency

2 The status of different types of content should be transparent to the viewer. Where access is provided to content that has a connection with the programme or which looks like editorial material but over which the licensee cannot assert editorial control, the viewer must not be misled into believing that such material is within the licensee’s control.

Note:

Ofcom recognises that links may be provided to material which resides eg on an Internet site or a third party server. It does not expect licensees to exert control over such content.

3 Advertisements appearing in conjunction with programme enhancements must

(a) be clearly distinguishable as advertisements; and

(b) be recognisably separate from all editorial content.

4 Where a viewer will incur any cost through choosing to interact (eg from a telephone call), this cost must be made clear.

Commercial content linked to programmes.

5 No interactive icon present during the course of editorial programming may

(a) be commercially branded; or

(b) be moved or placed by the broadcaster in conjunction with any part of the editorial content, if the resulting interactivity to which it leads contains commercial information related to the editorial.

Note:

This rule does not prevent the icon being branded with the identity of the editorial content provider or the interactive service provider. Nor is it intended to prevent all offers for sale linked to a programme or the provision of a moveable icon in circumstances where it could provide a link to genuine editorial support material. Its aim is to prevent the presentation of interactive options in a way which could prejudice programme integrity, e.g. by encouraging the production of programmes designed purely as vehicles for selling products.

Licensees should also be reminded of Ofcom's rules on undue prominence (Programme Code Rule 10.6). These limit references to products or services to what can be justified by the editorial requirements of the programme itself, and set the requirement that no impression be created of external commercial influence on the editorial process.

The rule applies only to the activities of broadcasters – it does not apply to any icons placed on the screen eg by equipment manufacturers.

6 A choice to interact is not the same as a choice to receive advertising or offers for sale. No choice to interact with editorial programming may take a viewer at the first click to a site dedicated wholly to advertising content. When the viewer first chooses to interact with editorial, the destination must therefore offer some editorial programme enhancements. These may be coupled with links to commercial content, but there should be a clear indication that the next click will take the viewer into advertisements or offers for sale.

7 Interactive options may contain information about products related to the editorial content of a programme such as books, video or music. But these options must be treated as advertising rather than editorial material.

Note:

This is not designed to prevent licensees making references to such material in and around programmes under the terms of Section 10.3 of Ofcom's Programme Code.

8 Within any programme enhancement, advertising which is not specifically selected by the viewer must not predominate over programme material.

Note:

Ofcom recognises that it is difficult to quantify screen area exactly but as a general rule will expect licensees to ensure that commercial messages do not fill more than one third of the screen in these circumstances.

9 No advertisement or other commercial content contained on an enhancement may be for a product or service that could not be transmitted in and around the programme in the linear environment.

News and current affairs programmes

10 No advertisement on an enhancement screen to a news or current affairs programme may be for, or contain any reference to, an advertiser, product or service referred to in, or otherwise connected with, the editorial content of that part of the programme where the interactive prompt resides.

Note:

For example, if a news or current affairs programme referred to a given advertiser then that advertiser may not advertise on any screen, or be referred to in any other advertisement, that will be seen if the viewer opts to interact with the news or current affairs programme.

11 No direct offers for sale may be provided on an enhancement screen to a news or current affairs programme.

Consumer advice programmes

12 Where a programme includes reviews or advice on products or services, no direct offers for sale of the products or services reviewed may be provided on an enhancement screen to the programme concerned.

Note:

This restriction is designed to exclude invitations to viewers to click into a direct offer for sale linked to the content of a 'what to buy' consumer advice programme. It does not exclude the provision of access to information about relevant products or services, or about the company concerned, nor does it exclude the provision of access to screens providing offers for sale provided these are not linked to the editorial content of the programme.

Children's programmes

13 No advertisement or other commercial content contained on an enhancement to a children's programme, or programme likely to have a significant child audience, may be for any product or service that could not be transmitted in or adjacent to that programme in the linear environment.

Note:

This means in particular that advertisements on enhancements to this class of programme may not contain direct offers for sale.