

RadioCentre response to the ICSTIS consultation - Introducing Prior Permission for Premium Rate Services used in Television and Radio Programmes

Introduction

The RadioCentre is pleased to respond to ICSTIS's consultation on prior permission for premium rate services (PRS) used in television and radio programming. This is an important issue and one which has received a good deal of media interest in recent months, focused almost entirely in breaches, both alleged and admitted, of rules in television PRS.

The RadioCentre, and its member companies, place public confidence in radio services at the heart of its mission. We have therefore carefully considered ICSTIS's proposals for the imposition of prior permission on radio, as well as television, PRS.

Our conclusion is that there is no evidence of any systemic problems or breaches of the ICSTIS Code in respect of the Commercial Radio industry. However, we accept that it is vital to our industry to maintain public confidence in our use of PRS services. Although there is no evidence at present that the problems affecting TV PRS have occurred in radio, we are therefore prepared to accept the extension of prior permission to all broadcasters.

We do so with great reluctance, given we believe the proposed extension is neither proportionate nor evidence based. Additionally we are dissatisfied with the way in which the pre-consultation and consultation has been carried out by ICSTIS – which itself has contributed to public unease in a most unhelpful and unjustified way.

We have three points to make in addition:

- It is our view that no extension of the ICSTIS code, other than the prior permission requirement is necessary. In all other respects the Code is sufficient and we have seen no evidence to the contrary
- The prior permission regime should be introduced in a targeted and proportionate way in order to minimise the regulatory burden. This is particularly important in a sector with many smaller organisations, such as Commercial Radio
- The prior permission system should be reviewed again in 12 months to assess the balance between regulation, compliance and public confidence. If the evidence shows that the prior permission regime in broadcasting PRS has improved compliance to such an extent that lessons have been learnt and there is not further need for it then ICSTIS should be ready to remove it.

We would be happy to discuss the contents of this submission with ICSTIS at any time.

About the RadioCentre

The RadioCentre was formed in July 2006 by the merger of the Radio Advertising Bureau (RAB) and the Commercial Radio Companies Association (CRCA). Its members consist of the overwhelming majority of UK Commercial Radio stations who fund the organisation.

The role of the RadioCentre is to maintain and build a strong and successful Commercial Radio

industry — both in terms of listening hours and revenues. As such, the RadioCentre operates in a number of areas including working with advertisers and their agencies, working with government, Ofcom, ICSTIS and policy makers, and also with stations themselves.

Bringing the RAB and former CRCA activities together under one leadership has allowed development and implementation of a single vision and plan for shaping Commercial Radio's future.

The consultation process

Commercial Radio has taken a consistently positive and proactive approach to its relationship with ICSTIS. Following the formation of the RadioCentre in 2006, an approach was made to ICSTIS to explore means of co-operative working, which resulted in a senior level meeting (October 2006); the RadioCentre publishing a report from ICSTIS in its quarterly bulletin; and representatives from ICSTIS being invited to attend the annual RadioCentre members' conference (January 2007).

However, despite the industry's efforts to maintain an open dialogue, as ICSTIS is already aware, the RadioCentre is concerned that this consultation was launched without adequate discussion with the Commercial Radio industry. In our meetings and exchanges with ICSTIS on this issue we put forward the argument that there was no real evidence to show any material breaches of the ICSTIS code by the Commercial Radio industry: this was apparently accepted by ICSTIS.

Although a stakeholder meeting was convened on 8 March (the 'Participation TV Summit') this meeting, as its name suggests, was concerned with the spate of allegations around PRS in TV programmes and quizzes. It should be noted that, on that basis, RadioCentre declined ICSTIS's invitation to participate in the forum, a position which ICSTIS acknowledged at the time, agreeing it would be more appropriate to address Commercial Radio issues in a separate meeting (which was held on 21 March 2007).

Subsequently we observed with concern a number of public statements by ICSTIS which seemed to imply that PRS in Commercial Radio programming was now under investigation or needed to "get its house in order"¹. Reports to this effect were carried in March 2007 in the Sunday Times, Mirror, Mail on Sunday and Guardian, as well as in trade publications. This form of regulation via the media was tantamount to prejudging individual cases which subsequently appeared to have had little or no substance.

Although we have responded to this consultation in a constructive manner, we hope that the approach taken by ICSTIS to its stakeholders will not be repeated in future.

Our approach

The Commercial Radio industry has not been complacent during the public furore over PRS. Public confidence in our conduct is vital to the success of member companies and we are willing to undertake whatever is required to maintain it, providing the response is proportionate to any genuine issues. We responded willingly to ICSTIS's request to carry out a thorough audit of PRS arrangements, which was subsequently shared with ICSTIS. The result was, as ICSTIS itself confirmed, virtually a clean bill of health and a clear commitment from Commercial Radio to amend arrangements that might have resulted in technical breaches of the ICSTIS Code:

"We're now in receipt of all the radio responses and have had a chance to review them. We've picked up on a handful of points where procedures lead to situations that were potential breaches of the ICSTIS Code but, on balance, have not pursued them – mainly due to low level (if any) consumer harm they would have caused."

¹ Marketing Week On-line edition 12.03.07

In all cases where issues were highlighted the broadcaster in question had explained their method for correcting the problem and how they planned to avoid repetition.” (ICSTIS e-mail to the RadioCentre, 21 May 2007)

We have explained to ICSTIS that treating radio programming and TV programmes on the same basis is flawed. Radio stations have a flexibility unavailable to TV in live programming, for example the ability to extend competition deadlines across slots if participation is higher than expected, or if technical problems result in a delay to the announcement of a competition winner. The Commercial Radio sector also has a long history of participation by listeners and has, as a result, a clear and entrenched understanding of how best to combine the important strands of enabling entertaining listener interaction with consumer protection and system integrity.

Accepting a prior permission regime for Commercial Radio PRS, it should therefore be clear, is intended purely to demonstrate that we are prepared to take every step to ensure that public confidence in our approach to PRS is maintained despite the damaging publicity associated with the TV industry. It cannot be justified on the grounds of actual breaches of the ICSTIS Code or real harm to our listeners, and we trust that ICSTIS will make this clear in its announcement on the results of the consultation.

Evidence base

In a number of places in the consultation document, ICSTIS has misrepresented the evidence available in order to justify regulatory intervention and to suggest that there are endemic problems in Commercial Radio.

*“In the middle of February 2007 ICSTIS and Ofcom became aware of a number of apparent problems relating to premium rate and/or production compliance when used for voting and competition entry on mainstream television channels and, **to a lesser extent**, on radio.” (page 3, repeated on page 5 of consultation document – emphasis added)*

*“We recognise equally that the majority of issues that have recently arisen with possible non-compliance relate to television. We are, however, also investigating **a number of complaints** involving premium rate usage on radio.” (page 13 of consultation document – emphasis added)*

As far as the RadioCentre is aware, the total number of formal investigations relating to Radio is technically two, and in fact both these investigations derive from the same programme on the same provider (LBC/Chrysalis). In practice therefore there is a single investigation relating to the Commercial Radio industry.

However any reader of the ICSTIS consultation documents would inevitably come away with the perception that, while radio was a lesser offender compared to TV, there was a genuine cause for concern. On the evidence, this is misleading and ICSTIS has run the risk of colouring the response to the consultation by implying otherwise.

Public perception

ICSTIS states categorically that:

*“consumer trust in premium rate services had as a consequence [sc. of media reporting of allegations of non-compliance], **been eroded**” (page 3, repeated on page 5 of consultation document – emphasis added)*

This is a large claim. One might have expected some evidence to support it in respect of radio. In practice this could have been achieved either by conducting opinion research among the general public; or by asking providers of radio programming using PRS to provide information about

participation rates. Falling participation rates would have been a convenient proxy for public confidence.

As far as the RadioCentre is aware, neither of these things was done. The reference to an erosion of public confidence as a basis for regulatory intervention, certainly in respect of radio, is thus mere assertion or supposition.

In fact, had ICSTIS asked the RadioCentre for information we would have been happy to help. An informal survey of our members during the preparation of this response indicates, as it happens, that there has been no decline in participation rates. While this is not a scientific survey, it carries more weight than unsupported statements.

We strongly urge ICSTIS in future to collect substantive evidence before jumping to conclusions.

Regulatory principles

It is the RadioCentre's view that the proposed extension of prior permission to Commercial Radio PRS cannot be justified by evidence of systemic failings in the present arrangements, or by definitive evidence of a decline in public confidence in those arrangements. The extension is justifiable only in order to demonstrate our commitment to our customers.

In that connexion, we note the advice of the government's Better Regulation Task Force (BRTF), which includes in its five principles of good regulation the following relevant guidance:

- **Proportionality**
Policy solutions should be appropriate for the perceived problem or risk.
- **Targeting**
Regulation should be focused on the problem. You should aim to minimise side-effects and ensure that no unintended consequences will result from the regulation being implemented.
(http://www.cabinetoffice.gov.uk/regulation/consultation/consultation_guidance/planning_a_consultation/principles_good_regulation.asp)

These factors indicate that the prior permission regime should be as light-handed in its effect on Commercial Radio as possible, as the 'problem or risk' is very limited and 'side-effects' and unintended consequences' should be minimised.

Compliance costs

The consultation paper argues that direct compliance costs for service providers will total £80,000 (page 20 of consultation document). In addition the paper states that:

"The conditions which have been identified above as conditions which would apply to prior permission to operate Broadcast PRS do include elements to which broadcasters will need to have regard. These, in turn, could have implications for production companies and other parties in the value chain. We believe broadcasters will wish to exercise at least the same degree of diligence in relation to their engagement with the application process. Broadcasters do not face application fees but we assume they will incur higher due diligence legal costs and equivalent internal staff costs. In addition, broadcasters may be engaged in additional diligence checks in relation to their service provider partners. And we assume individual broadcasters will have multiple relationships with different service providers." (page 20 of consultation document)

In practice, as ICSTIS is aware, as well as the direct costs to service providers, these uncoded additional compliance costs and the due diligence required to implement the prior permission system will ultimately fall on broadcasters. This is a dynamic industry and it is likely that there will frequently be occasions in which there will be new relationships between service providers and broadcasters which have not previously worked together.

ICSTIS envisages that in this case a new permission would be required, certified by a professional person ("a qualified, solicitor, barrister or accountant", page 17 of consultation document). This would presumably apply even in cases where both the service provider and broadcaster had previously secured prior permission as part of other PRS operated with other providers.

In implementing this system, we assume that ICSTIS will proceed on the basis that an information provider (i.e. a broadcaster) will be treated as a single entity regardless of the number of radio stations (or other outlets) it might own. Requiring permission on a station-by-station basis would be completely disproportionate.

An alternative approach

The RadioCentre understands that ICSTIS may consider that this decisive action may be necessary given the media and political criticism of the operation of TV PRS services. We are prepared, albeit reluctantly, to support its extension to radio in order to maintain the existing public confidence in our PRS services and to avoid contamination by TV problems.

Because of the lack of evidence of real problems in the Commercial Radio industry we submit that ICSTIS should keep the situation under review, and should opportunity present itself to revert to the *status quo ante* that should be considered after 12 months.

**The RadioCentre
June 2007**

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Appendix

Response to consultation questions

Note: only those questions directly relevant to Commercial Radio PRS are considered here. The RadioCentre has responded in general terms to these. However, we are aware that many of our individual member companies will be submitting responses in their own right. They are the experts on matters operational and we suggest that ICSTIS carefully considers the points that they make, as well as seeking detailed advice on specific points where greater clarity is required.

Q2. What evidence do you have as to how serious and widespread a problem there is in respect of calls received either before lines are announced as open or after lines are ostensibly closed, and what steps could be taken to manage this problem in a way that limits callers from incurring costs without the benefits of receiving the service?

We have no evidence that this is a problem **in any respect** in the Commercial Radio industry. The phrase 'serious and widespread', is inapplicable to the Commercial Radio industry. This is primarily because, as an industry, Radio has always been aware of the risks involved in running premium rate services and of our obligations to both regulators and listeners to ensure our competitions and features are run fairly. As a consequence, compliance systems have always been in place to ensure that the situations described in this question do not arise. As noted in the submission above, there are substantial differences between TV and radio that reduce the risk of inadvertent harm to customers.

Q4. Do you agree with our proposed conditions for prior permission in relation to conduct as set out above? Have we omitted anything that is critical to considering risk?

We agree with most of the proposed conditions. Submissions from our member companies will offer ICSTIS more detailed advice on particular handling issues.

Q7. Do you agree with our analysis that the same inherent risks for premium rate use in programmes on television also exist in radio?

Q8. Do you agree with our judgement that the definition of Broadcast PRS should specifically extend to radio for the reasons set out above? If not, why not?

We do not agree with the presumption in Q.7. As set out in the response above, there are clear differences between radio and TV programming. The case for extending prior permission to the Commercial Radio sector exists only in the sense of offering customer reassurance, and we trust that ICSTIS's final decision should make that absolutely clear to stakeholders and media.

Q15. Do you agree with our proposals to introduce prior permission for Broadcast PRS where the primary focus of the need to obtain prior permission will be on service providers alone? If not, why not?

In practice this is an irrelevant consideration. Service providers will seek indemnities against breaches from information providers and the costs of compliance will be transferred up the value chain. Therefore ICSTIS should ensure that contact is maintained with information providers (broadcasters) during any consultation, inquiry or adjudication process.

Q17. What thoughts or suggestions do you have as to whether or not it would be sensible to engage broadcasters and/or production companies (when information providers) directly within the prior permission regime by causing them to accept, in effect, a position where they are directly answerable to ICSTIS for Code and condition breaches?

See response to Q15. Our members will also be responding on this issue from the point of view of efficient compliance with the Code and the prior permission system.