



RESPONSE TO ICSTIS: Introducing prior permission for premium rate services used in television and radio programmes

Virgin Media Television provides entertainment channels to the UK multi-channel television market. Virgin Media Television owns seven entertainment channels – LIVING, LIVING 2, Bravo, Bravo 2, Challenge, Trouble and Ftn (plus their time-shifted variants).

Virgin Media Television also has a 50% interest in UKTV, a joint venture with BBC Worldwide, which consists of ten channels: UKTV Gold, UKTV G2, UKTV Drama, UKTV Style, UKTV Style Gardens, UKTV Food, UKTV History, UKTV Documentary, UKTV People and UKTV Bright Ideas. Together, Virgin Media Television and UKTV are the largest supplier of basic channels to the UK pay-TV market. Virgin Media Television also owns the media sales house **ids**, and the content distributor Minotaur International.

Virgin Media Television is part of the content division of Virgin Media, which offers a wide range of communications and entertainment services to more than five million residential customers. Virgin Media's networks can service more than twelve million homes – 50% of UK households – and 85% of UK businesses.

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Introduction

Interactive services (such as premium rate competitions) are an integral part of some programme formats on channels wholly owned by Virgin Media Television (“VMtv”). For example, programmes such as *Most Haunted Live* have, by multi-channel standards, a sizeable audience whose members actively enjoy participating in the interactive element of the show.

Across our wholly-owned portfolio of channels, however, interactive services do not make up a significant part of the VMtv strategy. They neither generate huge call volumes nor the corresponding revenues available to the publicly-subsidised terrestrial channels.

As a consequence, the connectivity and capacity issues which have adversely affected the terrestrial broadcasters by causing consumer detriment are unlikely to affect multi-channel broadcasters such as VMtv.

As a responsible broadcaster we have nevertheless endeavoured to ensure that all our broadcast interactive services comply with the relevant ICSTIS and Ofcom rules. In general we believe that the proposals put forward in this consultation are sensible and proportionate. This response should be read in conjunction with the comments made in our response, in March this year, to your Call TV Quiz Review, and to the separate comments submitted by our Virgin Media colleagues at sit-up TV.

Proposal to introduce prior permission for broadcast PRS:

Q1. Do you agree with this definition of Broadcast Premium Rate Services? If not, not and what would you propose instead?

We agree with the proposed definition and acknowledge the rationale that this needs to be broad in order to be all-embracing and future-proof.

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 the 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?

In our experience, there have been no problems with calls being received before or after a competition has closed. Simply put, calls are not received before a competition has opened because the relevant number is not publicised in advance and, therefore, viewers would not know which number to call.

Similarly, the competition format that we run on our channels dictates that the closing date and time are clearly articulated to potential callers. All programme-based competitions are reactive; in other words, viewers will enter as the show is broadcast and the interactive element of the programme prompts them to do so. Should viewers call once the lines have closed, they hear a clear message informing them of this fact. In doing so we aim to minimise the possibility of creating any ambiguity in the viewers’ minds as to whether they have been entered or not.

Q3. Do you agree with our proposed conditions for prior permission in relation to connectivity and connection? Have we omitted anything that is critical to considering risk?

Yes. All the proposals outlined in this section of the consultation seem proportionate and sensible. We understand, however, that some SMS messages are delivered hours after they have been sent; and it may therefore not be possible for SMS providers to comply fully with this requirement.

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?

On the whole we agree with the proposed conditions as set out within the “conduct” section. However, we believe they do not address the reported incidences where broadcasters and/or service providers have apparently selected winners before the closing time of the competition. There is a need to include within this section conditions that specifically prohibit such activity.

Q5. Do you agree with our proposed conditions for prior permission in relation to cost and conditions as set out above? Have we omitted anything that is critical to considering risk?

Yes. We agree with the proposed conditions, which appear to be comprehensive.

Q6. Do you agree with our proposed conditions for prior permission in relation to coherence as set out above? Have we omitted anything that is critical to considering risk?

The proposal stating that “there must be no amendments to operational systems or procedures relating to the service without senior management authorisation” would be difficult to enforce. Given the nature of the incidences reported in the press over recent months, our suggestion would be to replace this with something more pragmatic such as “there must be no amendments to operational systems or procedures relating to the service without approval by all involved parties. Any changes must be processed through formal configuration management and change control processes”.

Q7, 8 and 9.

Do you agree with our analysis that the same inherent risks for premium rate use in programmes on TV also exist in radio? Do you agree with our judgement that the definition of Broadcast PRS should specifically extend to radio for the reasons set out above? Do you agree with our proposal to require providers of Call TV Quiz Services to continue to obtain prior permission specific to Call TV quiz Services but that we include in the existing permission certificates for providers of such services the above conditions?

We agree with all three of these issues.

Q.10 Do you agree with our assessment that Broadcast PRS involving auctions should be included with the need to obtain prior permission?

Yes, but only where the auction is based on the lowest unique bid or “reverse auction” genre, which is characterised by a high ratio between participants and winners.

We do not agree with this assessment in relation to legitimate auction channels, such as those operated by sit-up TV (which is part of Virgin Media). These exist primarily as electronic retailers and, as such, aim to sell as many products as possible. In dramatic contrast to the “reverse auction” genre, where there may be one product but many hundreds of participants, the ratio of participants to buyers/winners in electronic retailing is reversed, and is often 1:1. A further critical distinction is that the PRS aspect of the service should form only a minor component of a business’ total revenues.

Q11. Do you agree that music channels using premium rate votes to determine playlists from participants should be included with the need to obtain prior permission?

Yes, we agree with this proposal. However, for the sake of clarity and consistency it should be made clear that, (unless the music channels have directly contracted with a Network Operator in order to provide their PRS services) the need to obtain prior permission is the responsibility of the service provider, as defined in the ICSTIS Code. We also believe this wording could be broader in order to capture other broadcasters that may choose to utilise such a mechanic in the future.

Q12. Do you agree with our analysis that PRS involving charitable giving and donations should be included with the need to obtain prior permission?

Yes.

Q13. Do you agree with our assessment as to why we suggest that chat services should be excluded from the prior permission regime proposed in this paper? If not, why not?

We agree.

Q14. Do you consider that there are other categories of service which fall within the definition of Broadcast PRS but which should not be required to obtain prior permission?

We believe the exclusions proposed within this consultation are sensible and reasonable. At this time, we are not aware of other services which fall within the definition of Broadcast PRS which should be exempt from prior permission.

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?

It seems both prudent and appropriate to place the responsibility for seeking prior permission with premium rate service providers. This provides a central locus of responsibility to cover the wide and evolving variety of arrangements that might exist between Service Providers and broadcasters, (Information Providers). The latter should, of course, remain accountable to ICSTIS for Code breaches that relate to their own areas of responsibility. It will, therefore, remain important for ICSTIS and Ofcom to continue to work closely together in order to address these types of convergence issue.

Q16. Do you have any suggestions about how the effectiveness of the proposed prior permission regime might be improved?

The consultation document omits to mention what happens if a service provider, which has previously provided Broadcast PRS, has been the subject of investigation, complaint and/or fine by ICSTIS. It would be helpful to know what such a service provider would have to do in order to satisfy ICSTIS that it was worthy of operating services in a broadcast environment.

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?

The supply chain involved in providing broadcast PRS may be complex, but the regulatory issues that have arisen over recent months illustrate that a distinction can generally be drawn between those caused by programme producers or broadcasters on the one hand, and those caused by providers of premium rate telephony service on the other. The former should be dealt with by Ofcom under the Broadcasting Code while the latter should be handled by ICSTIS. In circumstances where the responsibility for a compliance failure is not clear, or where both parties deny responsibility, Ofcom and ICSTIS should liaise with one another to decide how best to proceed.

It should be clear, however, that broadcasters compete with one another for viewers and have a vested interest in maintaining a good relationship with their channel audiences. They are in the business of engaging viewers' hearts and minds, and the damaging effect of recent adverse publicity on the broadcast PRS market illustrates precisely the consequences of failing viewers and getting things wrong. The impetus towards self-regulation is therefore a powerful one for broadcasters.

In our view responsibility should in most cases default to the PRS Service Provider, in line with ICSTIS' historical practice.

If this response raises any questions, please contact Grahame Fowler, Head of Compliance or Duane Dedman, Commercial Compliance Manager.