

## **Response to Ofcom's Audience Participation in Radio Programming**

### **Background**

1. RadioCentre is the industry body for Commercial Radio. Formed in July 2006 from 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.
2. The role of RadioCentre is to maintain and build a strong and successful Commercial Radio industry - in terms of both listening hours and revenues. As such, RadioCentre operates in a number of areas including working with advertisers and their agencies, representing Commercial Radio companies to Government, Ofcom, copyright societies and other organisations concerned with radio, and working with stations themselves. RadioCentre also provides a forum for industry discussion, is a source of advice to members on all aspects of radio, jointly owns Radio Joint Audience Research Ltd (RAJAR) with the BBC, and includes copy clearance services for the industry through the Radio Advertising Clearance Centre (RACC).

### **Audience Participation in Radio Programming**

3. We share and wholeheartedly support Ofcom's objectives of maintaining listener trust in radio, as well as restoring consumer confidence in premium rate services (PRS). We believe that the trust that our listeners place in us every day is justified. Whilst there have been incidents in the past where radio stations have undermined that trust, and we recognise the need to avoid complacency, Commercial Radio is a fundamentally honest and decent industry. The relationship that listeners have with their favourite radio stations, and the trust they have in us, are core assets to our business and vital to the continued future of radio as a medium. We know this, and we know that we jeopardise that relationship at our peril.
4. The events of 2007 have understandably prompted Ofcom to consider what regulatory intervention is required to ensure that those events are not repeated. Insofar as they help to build confidence in our industry where it might have been undermined, we are happy to support Ofcom's endeavours. We feel it is worth noting, however, that what happened in 2007 represented the failures of broadcasters, not of regulators or the regulations themselves. We know of no instance of dishonest or unfair conduct by a broadcaster that Ofcom and/or PhonepayPlus were unable to deal with because it fell outside their regulatory powers. Nor are we aware of any instance of either regulator being prevented from enforcing their regulations by the imposition of sanctions where they were warranted. The creation of additional regulation in this area is an understandable, but not inevitable, consequence of those broadcaster failures two years ago.

*Q1. Do you agree that radio broadcasters should be directly responsible for PRS in programmes and also for other forms of communication where viewers seek to interact with programmes? If not, please explain why.*

5. We agree with the principle that, as licensees, broadcasters should be responsible for all aspects of their output, including its origination and production. This principle already applies to content broadcast by a radio station by produced by a third-party producer. It is logical to extend this principle to listener communication and PRS, and this extension would seem to fit with existing listener expectations. For these reasons, we support this proposal and favour Option 2 of the three options presented on page 18 of the consultation document.

6. We do not agree with the conclusion of the Ayre Inquiry that “to make broadcasters directly responsible for PRS compliance right through the supply chain ... is the only method ... to give broadcasters the incentive to exercise due diligence in the design, commissioning, delivery and auditing of PRS-programming.” Nor do we agree with the view in 4.24a that excluding this requirement would mean that “Ofcom might be unable to take regulatory action in relation to problems with the operation of PRS because of limits on our powers under licences as they currently exist.” Any fault or error in the PRS value chain that has an impact on the fair and honest delivery of on air content inevitably falls within Ofcom’s jurisdiction as a broadcasting regulation matter. Some of the high profile cases in television PRS involved failings by premium rate Service Providers, but Ofcom experienced no difficulty in pursuing regulatory action against the relevant broadcasters. Moreover, all the parties in the PRS value chain are also regulated by Ofcom – either directly or by delegated powers to PhonepayPlus. The proposed new licence condition will provide clarity, and will place the focus of regulatory action unequivocally on the broadcaster, but we do not believe this represents a significant change from past practice.
7. As we have argued in our response to the Ofcom PRS Scope Review, placing full responsibility for the entire PRS value chain on the broadcaster is a highly effective way of regulating broadcasting, but we would ask Ofcom to consider if it is the most effective way of regulating PRS. It would concern us – as we think it would concern Ofcom and consumers – if Network Operators, Service Providers or other Information Providers in the broadcast PRS chain felt they could be less vigilant about compliance, or even act dishonestly with impunity, knowing that it would be the broadcaster who would take the full brunt of regulatory action. It is not beyond the realms of possibility for the broadcaster to be as much the victim of an unscrupulous Service Provider as its listeners. Regulation is surely most effective when it is targeting at the real cause of failure, not a proxy for it. We trust that Ofcom will impose this new licence condition with common sense and, should its investigations find that a broadcaster has taken every reasonable step to prevent a failure from taking place, but another party in the value chain has caused such a failure to occur, Ofcom will re-focus its attention accordingly.
8. As Ofcom has noted, RadioCentre has already incorporated this proposed licence variation in its ‘Code of Conduct for Premium Rate Interaction’. Ofcom is right to observe that this Code is not a self-regulatory code. This is intentional. RadioCentre is not a regulatory body and does not have, nor does it seek, powers of enforcement over its members. The Code of Practice is intended to be a guiding set of principles, along with valuable practical advice, to ensure that premium rate activity is conducted fairly, honestly and openly. The fact that we have made RadioCentre membership conditional on compliance with the Code of Practice is evidence of how seriously we as an industry take issues of listener trust, as well as regulatory compliance.

*Q2. Do you have any comments on the draft licence variation set out in Annex 2? Please explain any comments and provide your own drafting proposals as appropriate.*

9. We are content with the draft licence variation. What we have sought to achieve with our Code of Practice – and Ofcom may wish to augment this with guidance of its own – is a rather less legalistic, more practical, ‘plain English’ guide to putting the new licence variation into effect. Our members have valid and reasonable concerns about how they should exercise their responsibility over those parts of the PRS value chain over which they have no direct control. In the event of a major system failure within a Service Provider or Network Operator, for example, which may force a premium rate competition to be aborted resulting in financial harm to those who have already entered, there is much that the broadcaster can do to contain the

damage, mitigate the harm and compensate those affected. The broadcaster may even have legal recourse against the Service Provider. But the broadcaster cannot physically prevent the failure from occurring in the first place. We assume that the inclusion of the word “reasonable” in section 2(a)(i) of the licence variation is intended to address just this point, but some clarification from Ofcom would be helpful.

*Q.3 Do you consider there is a need for radio broadcasters to obtain independent, third party verification that they are in fact complying with the draft licence obligations set out in paragraph 2 of the draft licence variation? If so, do you consider the method of verification discussed in section 4 is appropriate? Are there other appropriate options? Again, please provide reasons for your views.*

10. We believe that independent, third party verification of radio broadcasters' compliance with the licence variation is both unnecessary and would impose an excessive regulatory burden out of proportion to the potential harm that could result from non-compliance. These are for the reasons set out in paragraphs 4.30-4.34 of the consultation document. As Ofcom observes, radio operates PRS on a much smaller scale than television, and does so principally to offset some of the costs of production, rather than to maximise profit. When Ofcom introduced this proposal for television, it estimated the cost to broadcasters at “tens of thousands of pounds per broadcaster”. The fact that radio PRS is often run across multiple local radio stations, rather than single big channels, and each station would presumably have to be subjected to verification, suggests that the cost to radio might actually be higher than to television. This is likely to put the cost of verification at several times the total revenue generated by all but a tiny handful of radio PRS features. The practical upshot of this requirement would, therefore, be to eliminate PRS activity from Commercial Radio. This would, we believe, be to the listeners' detriment as it would make less funding available for the interactive features that our audiences enjoy.

**RadioCentre, July 2009**