

Ofcom broadcast bulletin

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Introduction

Ofcom's Broadcasting Code took effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). This Code is used to assess the compliance of all programmes broadcast on or after 25 July 2005. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

The Rules on the Amount and Distribution of Advertising (RADA) apply to advertising issues within Ofcom's remit from 25 July 2005. The Rules can be found at <http://www.ofcom.org.uk/tv/ifi/codes/advertising/#content>

The Communications Act 2003 allowed for the codes of the legacy regulators to remain in force until such time as Ofcom developed its own Code. While Ofcom has now published its Broadcasting Code, the following legacy Codes apply to content broadcast before 25 July 2005.

- Advertising and Sponsorship Code (Radio Authority)
- News & Current Affairs Code and Programme Code (Radio Authority)
- Code on Standards (Broadcasting Standards Commission)
- Code on Fairness and Privacy (Broadcasting Standards Commission)
- Programme Code (Independent Television Commission)
- Programme Sponsorship Code (Independent Television Commission)
- Rules on the Amount and Distribution of Advertising

From time to time adjudications relating to advertising content may appear in the bulletin in relation to areas of advertising regulation which remain with Ofcom (including the application of statutory sanctions by Ofcom).

Standards cases

In Breach

More4 Trail

E4, 26 September 2005, 00:10

Introduction

E4 transmitted a trail for its sister channel More4. The promotion, which lasted nearly a minute, started with two women, wearing only thongs, kissing, fondling and embracing each other. As they lay on a bed, they engaged in foreplay, only to be interrupted when one of them lent on the remote control, turning on a news report on More4. They began to watch and then became engrossed in a report about the price of postage stamps. They were then joined on the bed by the rest of the film crew who, it transpired, had been filming their activities.

A viewer complained that this trail, which was broadcast post midnight after *Six Feet Under*, featured offensive and demeaning content. The complainant said that as this was a trail, rather than a programme, they had no prior information about the content which would have enabled them not to watch it.

Response

Channel 4 said that its consideration of a new trail included not only the content, but also the time of transmission, the type of programming surrounding the trail and the likely expectations of the audience.

This trail was clearly aimed at an adult audience and was transmitted at a time during which it was expected that an adult audience would be watching. The majority of the audience at the time that the trail was shown were in the age group aged 35-54. The trail formed part of a series of advertisements promoting Channel 4's new channel, More4. The strap-line of the marketing campaign was "Coming Soon: The New Adult Entertainment Channel from 4" and use was made of the double-entendre associated with the words "adult entertainment". Through the campaign, More4 was attempting to reclaim the words "adult entertainment" in their literal context.

The broadcaster said that it was obvious from the outset that the trail was of an adult nature. While further into the trail it was made clear that the two women were partially naked, the images were not explicit or graphic. They simply showed two women engaging intimately.

Channel 4 said that the imagery was designed to emphasise the "adult entertainment" theme in a number of ways: that More4 was a channel aimed at adults; that even those who may be involved in the "other" adult entertainment industry would be attracted to the channel; and that More4 was not a broadcaster of that "other" adult entertainment.

E4, the channel on which the trail was broadcast, is principally an entertainment channel broadcasting a range of programmes reflecting popular culture and exploring a number of controversial themes. E4 had an established reputation for scheduling edgy drama series with often strong adult content. *Six Feet Under* was widely

recognised for exploring adult themes and frequently contained content of an explicit and graphic nature not apparent in the trail. Given the provocative nature of the trail, its broadcast was restricted to a post 22:00 slot, to be scheduled with care between programmes with adult content.

Channel 4 said that it considered that the gentle, humorous although admittedly provocative approach, taken in the trail was in no way out of context with the material frequently seen in programmes around the trail and at that time of night.

Decision

Rule 2.3 of the Broadcasting Code states that in “applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context.”. The rule also notes that “appropriate information should also be broadcast where it would assist in avoiding or minimising offence.” The meaning of “context” notes that it includes (amongst other matters) “the effect of the material on viewers or listeners who may come across it unawares”.

E4 is a channel with an established reputation for exploring and broadcasting controversial material with adult themes. The likely expectation of its viewers is therefore that they will see challenging and provocative material. We note that the channel had scheduled the trailer early in the morning when it was likely that there would be a small audience aged over 15.

We appreciate the trailer’s creative approach and the content’s humorous treatment – which would help mitigate potential offence that might be caused.

While the images were certainly sexually strong in the context of a trailer, they were not as explicit as would be expected under encryption on “adult entertainment” channels. In itself, the imagery was not of a nature that could be described as unacceptable for transmission on a channel like E4 after midnight. However, in this case the material appeared in a trailer and the scenes lacked the sort of context that would be provided within a programme - for example that provided by storylines and character development in a drama. Viewers would therefore have had no likely expectation of what they would see. Furthermore viewers were not given the opportunity, through information about content to make an informed choice about whether to watch.

While the “adult nature” of the content may have been apparent from the outset, its purpose – and that it was a trail - was not made clear until 48 seconds in. The scenes of “foreplay” between the two women were detailed - as one woman lay between the other’s legs, there were close-ups of her crotch as well as of the other’s naked breasts.

Although *Six Feet Under* does contain adult themes (including strong language), it does not frequently contain sexual scenes of a type shown in this trail. An audience for *Six Feet Under* would, therefore, not necessarily be expecting to encounter material of this nature. Therefore although accepting that E4 has an established reputation for showing programmes with strong adult content, we consider that viewers of the channel at this time would not necessarily expect, or accept, such sexually strong material during a trailer.

In these circumstances, we consider, given the context in which the material was broadcast, that information should have been provided to the audience. The trail was

therefore in breach of Rule 2.3.

Breach of Rule 2.3

The original decision to find this trailer in breach was appealed by the broadcaster, leading to a review by the Content Board. This finding is the result of that review.

Additional Guidance to Rule 2.3

Given the complexities of the issues the above case raises, we considered that additional guidance would be helpful for the interpretation of Rule 2.3.

Trailers and Programme Promotions

The following guidance note to broadcasters will appear in Ofcom's web-based Guidance which accompanies the Broadcasting Code.

Trailers come upon audiences unawares, so that people are not able to make informed choices about whether to watch or listen to them. Broadcasters should bear this in mind when scheduling trailers which may include challenging material (which includes but is not limited to, the use of the most offensive language, graphic violence or sexually explicit scenes).

The requirement in Rule 2.3 that broadcasters must ensure that material which may cause offence is justified by the context, equally applies to programme trailers. Therefore, trailers including challenging material (see above) may, in principle, be permitted post-watershed, provided they are sufficiently contextualised. It is therefore expected that:

- where such a trailer is broadcast during programming that is dissimilar in content – advance information should be given; or
- where the content of the trailer is substantially similar* to the programming either side of it - no advance information may be necessary.

In such cases, where the content of the trailer is substantially similar to the programming either side of it, then, it is not likely to be necessary for broadcasters to provide further advance information if either:

- o such information has already been given to the audience about the programme broadcast before the trailer (e.g. "the following programme contains language that some viewers might find offensive"); or
- o the likely expectation of the audience is that the programme contains challenging material and the trailer contains substantially similar material

*Broadcasters should note the use of the term "substantially similar" Simply because programming either side of a trailer contains adult themes does not mean that *any* trailer would be permitted e.g. audiences watching a programme containing offensive language would not necessarily expect a trailer broadcast during that programme to contain graphic violence or sexually explicit scenes.

Resolved

Classic Comeback

UKTV Gold, 2 April 2006, 19:00

Introduction

A viewer believed the content of the broadcast, which included offensive language (e.g. “bollocks”, “tits”) was unsuitable for the time of broadcast.

Response

UKTV Gold agreed that the programme contained language that was unacceptable for the time of broadcast. The programme had been commissioned for broadcast post-watershed - its earlier broadcast was due to human error. Not only had the broadcaster explained the gravity of the situation to those responsible, but also decided to issue an on-air apology at approximately the same time one week later.

The broadcaster said that it had introduced a new combined planning and scheduling broadcast system that should make any recurrence “technically impossible”. This programme had been broadcast as a late schedule change in the last week of the previous system’s operation. It offered its apologies for the mistake.

Decision

The programme’s repeated use of offensive language made it unsuitable for broadcast at 19:00 on this channel. However, we believe that the broadcaster’s apology, actions and assurances resolve the matter.

Resolved

Cash Lounge

Men & Motors, 1 February 2006, 16:00

Introduction

Viewers were given a choice of solutions to the question “How many times is the word “WINNER” written here?”. A viewer claimed that none of the answers given were correct.

Response

ITV, which owns Men and Motors, told us that solutions for this particular type of game were computer-generated. The software automatically counts all possible combinations of words within a given layout. However, in the course of a routine review following the broadcast, it was discovered that, on this occasion, the counting process had failed. The broadcaster had identified a fault in the software but had now rectified it, to ensure there was no recurrence.

In the programme, the solution said by the software to be correct, was accepted in good faith when given by a caller who was awarded the prize. However, none of the callers who were put to air ever said what really was the correct solution, and therefore none had been wrongly denied a prize. Nevertheless, the broadcaster apologised, adding that it could imagine the complainant's frustration and assuring us that it did not seek to anger its viewers in this way.

Decision

We accept that the incident was an unfortunate mistake. We welcome the review procedures undertaken by the broadcaster, which led to prompt action. We believe that this, together with its subsequent apology, resolves the matter.

Resolved

Other programmes not in breach/out of remit

12 April – 25 April 2006

Programme	Trans Date	Channel	Category	No of complaints
60 Seconds	25/03/2006	BBC3	Generally Accepted Standards	1
Alan Brazil Sports Breakfast	09/03/2006	Talksport	Generally Accepted Standards	1
Alien: The Director's Cut	20/03/2006	Sky One	Scheduling	1
Amateur Porn	10/04/2006	Channel 4	Generally Accepted Standards	1
BBC News	27/03/2006	BBC1	Violence	1
BBC News	10/04/2006	BBC1	Other	1
BBC News	19/04/2006	BBC1	Due Impartiality/Bias	1
BBC News 24	12/04/2006	BBC News 24	Due Impartiality/Bias	1
BBC West Midlands	22/11/2005	BBC West Midlands	Offence	1
Big Brother Sweden	06/03/2006	Kanal 5 (Sweden)	Violence	1
BNP PPB	21/04/2006	Various	Crime Incitement	1
Boy With a Tumour for a Face	10/04/2006	Five	Generally Accepted Standards	1
Brainiac	20/04/2006	Sky One	Sex/Nudity	2
Bremner, Bird & Fortune	09/04/2006	Channel 4	Other	1
British Touring Car Championship	09/04/2006	ITV1	Competitions	1
Cash Lounge	15/02/2006	Men & Motors	Competitions	1
Cathouse	03/04/2006	Bravo	Sex/Nudity	1
Celebrity Big Brother	18/04/2006	Channel 4	Scheduling	1
Channel 4 News	27/03/2006	Channel 4	Inaccuracy/Misleading	1
Channel 4 News	31/03/2006	Channel 4	Due Impartiality/Bias	2
Chantelle: Living the Dream	12/04/2006	Channel 4	Offensive language	1
Chris Evans	19/04/2006	BBC Radio 2	Sex/Nudity	1
Come Dine with Me	20/04/2006	Channel 4	Offensive language	2
Coronation Street	27/01/2006	ITV1	Dangerous behaviour	1
Countdown	20/04/2006	Channel 4	Religious offence	1
Death Wish Live	31/01/2006	E4	Offence	1
Death Wish Live	02/02/2006	E4	Dangerous behaviour	3
Death Wish Live	30/01/2006	E4	Offence	2
Derren Brown: Trick of the Mind	16/04/2006	Channel 4	Exorcism/Occult	1
Dismissed	23/03/2006	MTV	Generally Accepted Standards	1
Dispatches	11/04/2006	Channel 4	Inaccuracy/Misleading	1
Doctors	13/04/2006	BBC1	Scheduling	1
Doctors	11/04/2006	BBC1	Scheduling	1
EastEnders	30/03/2006	BBC1	Violence	1
EastEnders	18/04/2006	BBC1	Violence	1
Emmerdale	09/01/2006	ITV1	Other	1

Emmerdale	17/01/2006	ITV1	Other	1
Emmerdale	16/04/2006	ITV1	Animal welfare	2
Emmerdale	19/04/2006	ITV1	Generally Accepted Standards	1
Ewen and Roughy	14/03/2006	100-101 FM Real Radio	Generally Accepted Standards	1
FHM	22/01/2006	FHM	Dangerous behaviour	1
Five News	11/04/2006	Five	Generally Accepted Standards	1
Footballers' Wives	13/04/2006	ITV1	Substance abuse	1
Friday Play: London, This is Washington	14/04/2006	BBC Radio 4	Religious offence	1
Futurama	17/04/2006	Channel 4	Sex/Nudity	1
Graham Stewart's Afternoon Edition	06/04/2006	Talk 107	Inaccuracy/Misleading	1
Grease	02/01/2006	ITV	Offensive language	1
Green Wing	31/03/2006	Channel 4	Sex/Nudity	1
GWRFM	07/04/2006	GWRFM	Inaccuracy/Misleading	1
Hirsty's Daily Dose	28/03/2006	Galaxy 105	Offensive language	1
Holly and Stephen's Saturday Showdown	08/04/2006	ITV1	Generally Accepted Standards	1
Holly and Stephen's Saturday Showdown	15/04/2006	ITV1	Generally Accepted Standards	1
Hollywood's Greatest Monster Effects	26/01/2006	Five	Violence	1
House	13/04/2006	Five	U18 Sexual/Other Offence	1
I'm a Celebrity...4	18/04/2006	ITV1	Animal welfare	1
I've Won The Lottery	11/04/2006	ITV1	Advertising	1
Iain Lee	07/04/2006	LBC97.3	Dangerous behaviour	1
Ian Collins	05/12/2005	Talksport	Offence	3
Ian Collins	06/04/2006	Talksport	Generally Accepted Standards	1
ITV News	09/04/2006	ITV1	Inaccuracy/Misleading	1
ITV News	11/04/2006	ITV1	Undue prominence	2
ITV News	09/04/2006	ITV1	Inaccuracy/Misleading	1
ITV News	05/04/2006	ITV1	Due Impartiality/Bias	1
ITV News	13/04/2006	ITV1	Generally Accepted Standards	1
ITV News	19/04/2006	ITV1	Competitions	1
ITV Play	12/04/2006	ITV Play	Competitions	1
ITV Play	11/04/2006	ITV Play	Competitions	1
ITV Play	13/04/2006	ITV Play	Competitions	1
Jongleurs Unleashed	30/01/2006	Paramount Comedy	Religious offence	2
Let's Talk Sex	22/03/2006	Channel 4	Sex/Nudity	1
Live at the Tokyo Project	15/04/2006	96.2 The Revolution	Offensive language	1
Look North	08/11/2005	BBC1	Offence	1
Man Stroke Woman	17/04/2006	BBC2	Generally Accepted Standards	1
Mighty Truck of Stuff	08/04/2006	BBC2	Sex/Nudity	1
Monsters	04/02/2006	Channel 4	U18 Sexual/Other Offence	1
Moto sponsorship of ITV films	15/04/2006	ITV1	Violence	1

Mourinho's Ultimate +10 Team	01/04/2006	Channel 4	U18 Sexual/Other Offence	1
Muslim TV	10/04/2006	Muslim TV	Inaccuracy/Misleading	1
New Tricks	17/04/2006	BBC1	Sex/Nudity	1
News	24/03/2006	BBC Radio 4	Generally Accepted Standards	1
Newsround	18/04/2006	BBC1	Violence	1
Panjabi Radio Kohinoor	29/11/2005	Panjabi Radio Kohinoor	Offence	1
Party Election Broadcast	24/04/2006	Various	Generally Accepted Standards	1
Queer Eye for the Straight Guy	17/04/2006	Living	Sex/Nudity	1
Ramadan Radio	05/11/2005	Ramadan Radio	Offence	1
Richard Hammond's 5 O'Clock Show	17/02/2006	ITV1	Other	1
Rising Damp	18/04/2006	ITV1	Generally Accepted Standards	1
Rock School	11/02/2006	Channel 4	Offensive language	1
Rock School	18/02/2006	Channel 4	Offensive language	4
Rock School	20/04/2006	Channel 4	Offensive language	2
Sam & Hannah's Big Fun Breakfast	17/03/2006	107.4 The Quay	Generally Accepted Standards	1
Sarah Beeny's Streets Ahead	11/04/2006	Channel 4	Offensive language	1
Sky News	19/03/2006	Sky News	Due Impartiality/Bias	1
Sky Sports	12/03/2006	Sky Sports	Offensive language	1
Soapstar Superstar	07/01/2006	ITV2	Offensive language	1
Soccer AM	18/04/2006	Sky Sports	Sex/Nudity	1
Sports Disasters III	02/04/2006	Reality TV	Generally Accepted Standards	1
Sunrise Radio	24/12/2005	Sunrise Radio	Religious offence	1
T4	12/04/2006	Channel 4	Sex/Nudity	1
T4	08/04/2006	Channel 4	Sex/Nudity	1
Taggart	22/03/2006	ITV1	Generally Accepted Standards	1
Take My Mother-in Law	04/04/2006	ITV1	Religious offence	1
Tarrant on TV	07/03/2006	ITV1	Sex/Nudity	1
Tarrant on TV	13/04/2006	ITV1	Sex/Nudity	1
Tarrant on TV	20/04/2006	ITV1	Violence	1
Ten Days That Made The Queen	20/04/2006	Channel 4	Other	1
That'll Test 'Em	11/04/2006	More4	Offensive language	1
The Album Chart Show	11/04/2006	E4	Offensive language	1
The Album Chart Show	20/04/2006	E4	Offensive language	1
The Bloody Circus	18/01/2006	Channel 4	Offensive	1
The Brits Backstage	17/02/2006	ITV1	Generally Accepted Standards	1
The Chris Moyles Show	18/04/2006	BBC Radio 1	Religious offence	1
The Incredible Journey of Mary Bryant	16/04/2006	ITV1	Sex/Nudity	1
The Jeremy Kyle Show	10/04/2006	ITV1	Generally Accepted Standards	2
The Last Word	06/04/2006	More4	Generally Accepted Standards	1

The Most Outrageous TV Moments Ever	12/04/2006	Five	Generally Accepted Standards	2
The New Paul O'Grady Show	19/04/2006	Channel 4	Generally Accepted Standards	1
The Simpsons	10/04/2006	Sky One	Dangerous behaviour	1
The Street	13/04/2006	BBC1	Sex/Nudity	2
The Wright Stuff	11/04/2006	Five	Generally Accepted Standards	1
This Morning	20/01/2006	ITV1	Advertising	1
This Morning	07/02/2006	ITV1	Sex/Nudity	4
This Morning	09/02/2006	ITV1	Sex/Nudity	3
This Morning	06/02/2006	ITV1	Sex/Nudity	1
This Morning	08/02/2006	ITV1	Sex/Nudity	1
Thought for the Day	26/05/2005	BBC Radio 4	Generally Accepted Standards	1
Three Minute Wonder	10/04/2006	Channel 4	Religious offence	1
Tiny Pop	24/03/2006	Tiny Pop	Sex/Nudity	1
Top Up TV	12/04/2006	Top Up TV	Advertising	1
Unreported World	21/04/2006	Channel 4	Due Impartiality/Bias	1
Virgin	15/04/2006	Virgin 105.8FM	Dangerous behaviour	1
Vital Signs	20/04/2006	ITV1	Generally Accepted Standards	1
Wales This Week	20/03/2006	ITV Wales	Due Impartiality/Bias	1
Weakest Link	13/04/2006	BBC2	Generally Accepted Standards	1
Westwood Rap Show	03/03/2006	BBC Radio 1	Offensive language	1
Westwood Rap Show	17/03/2006	BBC Radio 1	Offensive language	1
Why We Went to War	05/01/2006	Channel 4	Impartiality	1
You've Been Maimed	29/11/2005	Paramount Comedy	Offence	1