



Broadcasting Commission of Ireland
Coimisiún Craolacháin na hÉireann

Review of Submissions Received

Consultation

BCI Code of Programme Standards: Phase 1

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Preface

On 7 September 2005, the Broadcasting Commission of Ireland (BCI) launched its *BCI Code of Programme Standards: Phase 1* consultation document.¹ ² This marked the first stage of a process designed to culminate in the creation of a code of programme standards in Ireland. The impetus to respond to this area comes from the *Broadcasting Act, 2001* which requires the BCI to draw up a list of programming standards with particular reference to the portrayal of violence and sexual content.³

The purpose of this document is to review submissions received during the first phase of the consultative process. It outlines the stages of the consultative process and identifies those to be affected by this regulatory measure. It draws the outline of the present report and identifies the style which characterises it.

Consultation process

The code will address issues of taste, decency, harm and offence with respect to programming material transmitted on Irish television and radio. It will be the first code of its kind in Ireland. While Section 9.1(d) of the *Radio and Television Act, 1988* provided a basis for matters of taste and decency to be assessed vis-à-vis services licensed under that Act, separate legislation affected RTÉ services.⁴ The *Code of Programme Standards* will be the first attempt to embody statutory principle into one set of guidelines which will apply equally to all Irish broadcasters.⁵ Although a new departure, the development of this code will draw heavily on the experience of Irish broadcasters and the internal guidelines currently each applies to programming. The

¹ The launch took place at the BCI's offices at Warrington Place, Dublin 2.

² This document is referred to as *Phase One Consultation Document* hereafter.

³ The BCI coordinates principal activities unfolding in Irish radio and television. Legislation outlining its functions, and thus, underpinning its work, is the *Radio and Television Act, 1988* and the *Broadcasting Act, 2001*. Relevant sections in this regard are Sections 19.1(a), 19.5 and 19.6. See Appendix I for extracts from this Act and other national legislation. Appendix II identifies relevant legislation at EU level.

⁴ Relevant legislation would include *Broadcasting Authority Act, 1960* and *Broadcasting Authority (Amendment) Act, 1976*.

⁵ Section 9.1(d) of the *Radio and Television Act, 1988* states that each independent broadcaster must ensure that 'anything which may reasonably be regarded as offending against good taste or decency, or as being likely to promote, or incite to, crime or as tending to undermine the authority of the State, is not broadcast by him.' Details of other relevant legislation is provided in Appendix I.

views of other interested parties and of the general public will also be elicited at key junctures.

To maximise participation, the BCI decided to develop the *Code of Programme Standards* over three distinct phases. Such an approach was designed to encourage input, debate and reflection. It allows the findings of one phase to shape the next and for additional information to be gathered as appropriate. Most importantly, the BCI believes this to be a more transparent process as summaries of views expressed together with decisions made will be made publicly available.

Application of the *Code of Programme Standards*

The code will apply to RTÉ radio and television services, TG4, to those television and radio stations licensed under the *Radio and Television Act, 1988* (including the national broadcasters, TV3 and Today FM) as well as content contractors licensed by the BCI under the *Broadcasting Act, 2001*. It will not apply, however, to those services licensed in other jurisdictions – for example, BBC, Channel 4, Sky, MTV, Playboy TV, Television X and Extreme Sports among others – which remain subject to the rules and regulations of their country of origin.

Consultative process: Phase One

In this first phase, submissions could be made on line, by email or post. In addition, a seminar was held with broadcasters and other relevant groups.⁶ Further supplementary information was collected through a national attitudinal survey conducted by Lansdowne Market Research.⁷

Outline of the present report and the approach taken

Requests from stakeholders and from the public for the *Phase One Consultation Documents* were generally high. A total of 298 copies were sent out. Responses made totalled 71.⁸

This document reviews submissions made during the first phase of the consultation process. The format mirrors the *Phase One Consultation Document*. It is divided into three distinct sections: (i) application of regulatory principles to the development of the code; (ii) scope of the code; and (iii) context. Concluding remarks are not presented in each individual section but at the end of the document. It should be noted that while respondents were invited to answer all questions set, they were under no compulsion to do so. Consequently, submissions received were often uneven, addressing questions deemed relevant and/or of interest to that individual and/or group while leaving other areas untouched.

The approach taken to the consideration of submissions was systematic and analytic. As this was a general call, all representations were afforded equal weighting. Each individual submission was counted as one irrespective of the numbers represented

⁶ City West Hotel, Dublin on 27 October 2005.

⁷ *Towards the development of a code on Taste and Decency*, www.bci.ie/documents/attitudinal_survey.pdf.

⁸ A list of submissions received is provided at the back of this document.

therein. Representations made by individual members of key organisations were counted separately. The method applied allowed for a thorough appraisal of information received in terms of the respondent's objectives, context and content and his/her or an organisation's overall contribution to the rules currently being devised.

The reporting style of the document is informative rather than analytic. It aims to record rather than to advance/discuss suggestions made. Where possible, comments are grouped according to three categories: (i) members of the public; (ii) representative organisations; and (iii) broadcasters. Such an approach shows succinctly the diversity of views presented and provides clarity vis-à-vis positions taken. Where additional comments and/or observations were made by respondents, consideration was given as appropriate. Viewed as a whole, this document should be seen as part of the overall process in the devising of the code of programme standards rather than a stand alone report.

Review of Submissions Received

1. Application of regulatory principles to the development of the code

1.1. Introduction

In the formulation and regulation of its regulatory policies, the Broadcasting Commission of Ireland (BCI) uses five guiding principles. These are as follows:

1. diversity;
2. flexible and consistent approach;
3. adequate regulation based on current conditions;
4. openness and dialogue;
5. clear decision-making, transparency and accountability.

Each endorses the Council of Europe's belief that the primary task of a regulator is to ensure that it functions smoothly by establishing a climate of dialogue, openness and trust in its dealings with stakeholders. Principles adopted by the BCI illustrate the importance attached to being able to respond adequately to unforeseen and often complex questions which will emerge in the developing broadcasting landscape. Furthermore, these principles are in line with those presented by the Government in its White Paper *Regulating Better* and subsequently developed by the BCI in its own *Strategic Plan 2004-2008*.¹

1.2. Objectives of the code

The manner in which these five principles will inform the BCI's approach to the development of the *Code of Programme Standards* was presented in the consultation document.² In the context of these regulatory principles, and the statutory obligation to produce such a code, the BCI identified five additional key objectives. These were outlined as follows:

1. to promote responsible broadcasting where entertainment, education and access to information and a range of views is enhanced and offence and harm is reduced;

¹ For further information, see *Phase One Consultation Document*, 10-12.

² For further information, see *Phase One Consultation Document*, 10-12.

2. to acknowledge the diversity of taste and interests which exists within viewing and listening audiences and to facilitate broadcasting that caters for this diversity;
3. to inform viewer and listener choice;
4. to provide guidelines to broadcasters;
5. to inform viewers and listeners on the standards they can expect from broadcasting services.

1.3. Questions asked

On the basis of information presented, the BCI asked for views on two areas. Questions asked were as follows:

1. Are these key objectives appropriate in the context of the development of the *Code of Programme Standards*?
2. Are there other objectives which should be taken into account?

Please provide a rationale for your views.

1.4. Feedback

1. *Are these key objectives appropriate in the context of the development of the Code of Programme Standards?*

Of the submissions received, there was an overwhelming acceptance of the objectives as described. Only five of those received from the general public rejected them. Comments voiced in support were not unconditional, however, with one respondent believing that the ‘objectives are appropriate but incomplete.’³ The Media Studies class at NUI Maynooth contended that ‘By acknowledging the diversity of taste these objectives ensure that all viewers/listeners will be catered for and that a wide variety of entertainment will be available to all. It prevents censorship and endorses programming to suit the tastes of all.’⁴ They felt, however, that ‘the tastes of viewers/listeners from various religions, ethnic groups and those of people with disabilities are not being catered for and so clarification is needed in the second objective.’⁵

Comments made by Cynthia Hampson summarise views expressed in opposition to the objectives. She wrote as follows:

1. Offence and harm should not be reduced but obliterated.
2. taste and interests are very varied and should always be decent.
3. viewers and listeners choices should not interfere with decency.
4. The highest Standards should always be applied especially to the unwanted amount of sex, bad language, violence and anti-Christian (especially Catholic) programmes.⁶

³ Orla Halpenny: e3, 1

⁴ Media Studies class, National University of Ireland, Maynooth: h31, 5

⁵ Media Studies class, NUI Maynooth: h31, 5

⁶ Cynthia Hampson: web 386.

Mary Moore rejected the objectives, believing that ‘diversity of taste and interests can be extremely ambiguous.’⁷ Similar views were expressed by the Family and Media Association.⁸

In general, broadcasters voiced support for objectives identified.⁹ TV3 believed that the objectives espoused are already being met by broadcasters and argued that the BCI is overly bureaucratic, that it is introducing too many codes too quickly.¹⁰

The UTV owned radio stations supported the objectives. More specifically, they said

Broadcasters are acutely aware of the potentiality of offence when certain subject matters are discussed and debated. There is a wide diversity of taste and interest amongst the Irish listening audience and broadcasters must seek to reflect the widest possible range of viewpoints. Clear, concise and meaningful BCI guidelines will assist broadcasters in reflecting this diversity of tastes in a responsible manner.¹¹

2. Are there other objectives which should be taken into account?

Additional objectives were suggested by some respondents. Siobhan Symons believed the objective of not broadcasting unsuitable programmes prior to 9pm should also be enshrined in the objectives.¹² Bernadette Kiely asked that ‘Through broadcasting to promote the common good of society and in particular the values of truth and respect for the dignity of the human person without discrimination of race or creed.’¹³ One respondent asked for a more liberal attitude to be taken to adult content: ‘In Germany films of an extreme sexual nature were shown after 1AM. I believe this to be a responsible time to screen such material and the code should allow for adult material to be screened at a reasonable time with a suitable warning at the beginning of the broadcast.’¹⁴ Another respondent suggested the following objectives: ‘To ensure decency in programmes broadcast To ensure respect for religious sensibilities and sensitivities To protect children and vulnerable adults from harmful content.’¹⁵

Terry Gillespie asked that two additional objectives be included. He outlined these as follows:

1. to inform viewers of both the positive and negative effects of television, and to encourage informed viewer decision making on programme selection. Information should be based on the findings of objective independent research.

⁷ Mary Moore: web 391.

⁸ Family and Media Association: h32, 1.

⁹ See, for example, Peter Feeney (Head of Public Affairs Policy, RTÉ): web 356.

¹⁰ TV3: h1, 1-2, at 2.

¹¹ Submission on behalf of UTV owned radio stations (Cork’s 96 and 103FM; Limerick’s Live 95FM; Dublin’s Q102; and LMFm): e8, 1.

¹² Siobhan Symons: web 367.

¹³ Bernadette Kiely: web 371.

¹⁴ Michael Sheridan: web 379.

¹⁵ Brendan O’Regan: web 394.

2. to educate viewers to differentiate between what they consider offensive and what is known to be harmful.¹⁶

Peter Feeney (Head of Public Affairs Policy, RTÉ), suggested that freedom of speech and artistic freedom of expression should be considered in addition to the list proffered by the BCI.¹⁷ Phantom FM believed that in framing the *Code of Programme Standards*, the BCI should adopt a ‘light touch’ approach.¹⁸ Similar sentiments were voiced by TV3 which suggested that ‘the BCI make it an objective of the code that it does not stifle indigenous Irish broadcasting.’¹⁹

1.5. Concluding remarks

The first section considered the guiding principles and objectives put forward by the BCI. In general, these tenets were accepted by the public and broadcasters alike. Some suggested additional objectives while views were expressed concerning a perceived need to specify certain groups. Others suggested a principal be adopted to make it a rule to inform viewers and/or listeners of potentially contentious material.

¹⁶ Terry Gillespie: e5, 3.

¹⁷ Peter Feeney: web 356.

¹⁸ Phantom FM: e7, 1.

¹⁹ TV3: h1, 2.

2. Scope of the code

2.1. Introduction

In determining that a code for taste and decency should be devised, the Irish *Broadcasting Act, 2001* stated that particular attention should be paid to the portrayal of violence and sexual content. It did not, however, indicate what might be included thereafter. By examining national and international practice, research carried out by the Broadcasting Commission of Ireland (BCI) was able to pinpoint other areas falling within the domain of ‘taste and decency’.¹ While sex, violence and coarse language were to the forefront, and deemed to be the issues causing most concern, other areas emerged as being in need of possible regulation.

Phase One Consultation Document identified areas common to codes operating in other jurisdictions. The list provided was as follows:

- (i) coarse language;
- (ii) children’s programming;
- (iii) portrayal of persons and groups in society;
- (iv) portrayal of drugs, alcohol and solvent abuse;
- (v) news and current affairs;
- (vi) imitative behaviour.²

Introducing these headings, the BCI invited views regarding which might be included in the code. In so doing, it was allowing the breadth and depth of the approach to be set through consultation with the general public and key stakeholders. Views expressed would then feed into Phase Two of the consultation process, providing broad headings under which further discussion could occur. At this juncture, emphasis was on establishing headings, not detailed information on what might be contained under each.

¹ For further information, see RBM Quinn (2005), *Taste and Decency – a review of national and international practices*, Dublin: BCI.

² For further information on each of these areas and on the approach taken in other States, see RBM Quinn (2005), *Taste and Decency – a review of national and international practice*, Dublin: BCI.

2.2. Questions asked

In this section, three questions were posed. These were as follows:

1. The BCI is statutorily obliged to include the issues of violence and sexual content in the *Code of Programme Standards*. Are there types of broadcast sexual content [sic] or violence that you believe should receive particular attention in the code? Please provide a rationale for your response?
2. Which, if any, of the following areas do you consider appropriate to include in the Code of Programme Standards? Please provide a rationale for your response, explaining why you consider this as an important heading to include:
 - i. coarse language;
 - ii. children's programming;
 - iii. portrayal of persons and groups in society;
 - iv. portrayal of drugs, alcohol and solvent abuse;
 - v. news and current affairs;
 - vi. imitative behaviour.
3. Are there other areas/issues that you believe should be included in the code? Please provide a rationale for your response.

2.3. Feedback

1. *The BCI is statutorily obliged to include the issues of violence and sexual content in the Code of Programme Standards. Are there types of broadcast sexual content [sic] or violence that you believe should receive particular attention in the code? Please provide a rationale for your response?*

Views expressed centred on common themes. Sex and violence which were of a gratuitous nature were highlighted. Sexual content that demeans the dignity of a person and which promotes promiscuity was raised by a few respondents.³ Sexual conduct that was too explicit and/or verged on 'pornographic' was identified.⁴ Portrayal of same sex relationships was also emphasised.⁵ The Family and Media Association asked for the depiction of a number of sex acts to be prohibited – 'e.g. underage sex and masturbation.'⁶

Similarly, there were those who believed that violence which demeans the dignity of a person should receive particular attention.⁷ According to Orla Halpenny, 'The Code should uphold the dignity of the person and actively discourage all broadcasting which reflects a view that the person is an object without intimacy.'⁸ Bernadette Kiely asked that particular attention be paid 'to anything that seems to glorify violence or promote violence as a suitable means of resolving problems as well as anything that

³ See, for example, Paul Macdonald: web 348; and Tom Ascough: web 349.

⁴ See, for example, Mary Dooley: e9.

⁵ See, for example, Bernadette Kiely: web 371; Enda Long: h28, n.pag.; Dorothea Gray: h27, n.pag.

⁶ Family and Media Association: h32, 1.

⁷ Paul Macdonald: web 348.

⁸ Orla Halpenny: e3, 1.

promotes hostility in society against groups or individuals.’⁹ For Brendan O’Regan, violence ‘that is portrayed as fun should get attention...’ and particular caution should apply to the depiction of suicide.¹⁰ His point vis-à-vis violence as entertainment was echoed by Terry Gillespie.¹¹ The Media Studies class from NUI Maynooth was quite detailed in the approach taken, listing categories of violence and sex which the students believed should be highlighted.¹²

Requests were made for particular attention to be paid to sexual content and violence aimed at children and teenagers.¹³ Stephen McAuley believed that ‘Just because a programme might reflect the reality of life doesn’t mean that children should be exposed to and influenced by it.’¹⁴ For Orla Halpenny, ‘Sexual activity involving under-age people should...be excluded, because of the imitative impact.’¹⁵ Mary Kelliher developed this further when she referred to the ‘sexual exploitation of women and children’. She also asked for explicit sexual conduct in music videos to receive attention.¹⁶

Phantom FM believed that some aspects of sexual content and violence should be considered. It included those ‘universally viewed as unacceptable in general society...’ and stated that ‘Such aspects would include rape and other non-consensual sex acts within the sexual content aspect, as well as gratuitous violence, particularly against women and children, within the general violence aspect.’¹⁷ For Peter Feeney (Head of Public Affairs Policy, RTÉ), a distinction ‘needs to be made between depiction in drama and news and current affairs reporting on violence and sexual material.’¹⁸ TV3 questioned the approach currently being taken. Instead of being specific, it argued, the BCI should ‘lay down a general standard.’ Here it referred to Ofcom’s *Broadcasting Code* which states ‘broadcasters must provide adequate protection...from the inclusion of harmful or offensive material, judged against generally accepted standards.’¹⁹ It continued on to say

In this context TV3 would urge the BCI...to use this standard “generally accepted standards” instead of nebulous and ill defined “taste and decency” parameters. TV3 would argue that what is generally accepted can normally be ascertained particularly by reference to type of programming and time of broadcast. The concept of providing protection also fits into the BCI’s view...in the section on diversity, that it should not be a censor.²⁰

⁹ Bernadette Kiely: web 371.

¹⁰ Brendan O’Regan: web 394.

¹¹ Terry Gillespie: e5, 3.

¹² Media Studies class, National University of Ireland Maynooth: h31, 6-8. Areas specified: ‘gun violence; physical violence; racial violence; violence in animation; sexual abuse; sexual conduct; sexual conversation; underage sex; rape/sexual assault.’

¹³ Annette Cleary: web 358.

¹⁴ Stephen McAuley: h30, n.pag.

¹⁵ Oral Halpenny: e3, 1.

¹⁶ Mary Kelliher: web 388.

¹⁷ Phantom FM: e7, 1.

¹⁸ Peter Feeney (Head of Public Affairs Policy, RTÉ): web 356.

¹⁹ TV3: h1, 2.

²⁰ TV3: h1, 4.

The UTV owned radio stations referred to the difference between radio and television in this instance. For them, ‘Any content of a sexual/violent nature is more likely to cause offence on television rather than radio. Radio, however, should take special care where such items are either aimed at or likely to be heard by children and specific regard should be given to this in the code.’²¹

2. *Which, if any, of the following areas do you consider appropriate to include in the Code of Programme Standards? Please provide a rationale for your response, explaining why you consider this as an important heading to include:*

- (i) *coarse language;*
- (ii) *children’s programming;*
- (iii) *portrayal of persons and groups in society;*
- (iv) *portrayal of drugs, alcohol and solvent abuse;*
- (v) *news and current affairs;*
- (vi) *imitative behaviour.*

Many responded to this question but few provided reasons for their choice. Some chose simply to answer ‘yes’/‘no’ to the questions set. The total number of respondents was twenty nine and the results are represented in the following table:

Category	Yes	No
Coarse language	20	9
Children’s programming	25	4
Portrayal of persons and groups in society	24	5
Portrayal of drugs, alcohol and solvent abuse	26	3
News and current affairs	22	7
Imitative behaviour	19	10

A sample of comments made are grouped under the categories specified. These are as follows.

Coarse language

Concern was expressed for the perceived increase in coarse language on radio and television.²² Hearing such language on radio caused some respondents concern as they believed listening was not always by choice: ‘Please remember there are some places where you are “forced” to listen to a certain show – i.e. the dentist/office where the radio station is piped to all areas and you have no control.’²³

In its submission, Phantom FM did not support the inclusion of ‘coarse language’. Primarily, it argued that such language was in constant flux:

Any attempt to prescribe words, phrases and their specific usage as unsuitable would be an attempt to apply legally enforced definitions on a continually moving target. The result

²¹ Submission on behalf of the UTV owned radio stations: e8, 2.

²² See, for example, Lolo Robinson: web 350; Fiona Hodge: web 353.

²³ Fiona Hodge: web 353.

would be that contemporary language usage would always be ahead of the code definitions, and broadcasters would therefore be prohibited from accurately reflecting contemporary conditions.²⁴

Phantom FM highlighted context as an important factor in making determinations in this context. In particular, it referred to music radio programming and the proliferation of ‘swear words’ in much of today’s music. Here it said:

If the music presentation is true to the genre being catered for, with the use of language being within legislative requirements and not gratuitous, then it is integral to the music genre being served and to the specific intended audience. It is worth remembering that Elvis Presley and The Beatles were once banned from radio airplay because their music and performances were not understood or appreciated by the content regulators of the time.²⁵

The UTV owned radio stations concurred with Phantom’s point that coarse language is both subjective and constantly evolving. ‘However, if one were to deem “coarse language” to be language calculated and designed to cause offence, then guidelines would be helpful. A prescriptive list of unsuitable words and phrases might be counter-productive, as in the spoken word context and emphasis is key.’²⁶ The Communications Law class in NUI Galway also referred to the changing nature of such language. Consequently, it contended that ‘The meaning of “coarse language” is a concept under constant metamorphosis and, as such, necessitates the adoption and application of broad, flexible principles.’²⁷

Children’s programming

For Annette Cleary, it ‘is important to monitor what children watch and hear both on TV and radio as I feel they are open to imitating what they hear and see.’²⁸ Also asking for this to be included, Siobhan Symons stated that ‘By broadcasting many of these young children and teenagers become more aware of social problems. In a sense this is good but for many this is how they get their first taste of abuse be it drugs, drink and many forms of violence.’²⁹ It was also contended that ‘children’s programming’ be included because children do not have the same ability to contextualise what they see or hear when compared to adults.³⁰ For the Media Studies class at NUI Maynooth, particular attention should be paid to the timing and content of children’s programmes.³¹ The Communications Law class at NUI Galway argued that restrictions should not apply uniformly to all those under eighteen years of age, that respect should apply to different ages of development.³²

²⁴ Phantom FM: e7, 1.

²⁵ Phantom FM: e7, 1.

²⁶ Submission on behalf of the UTV owned radio stations: e8, 2-3.

²⁷ Communications Law class, Masters in Public Law, National University of Ireland at Galway: e10, 10.

²⁸ Annette Cleary: web 358.

²⁹ Siobhan Symons: web 367.

³⁰ Orla Halpenny: e3, 1.

³¹ Media Studies class, NUI Maynooth: h31, 8.

³² Communications Law class, Masters in Public Law, NUI at Galway: e10, 10.

The UTV owned radio stations contended that it is incumbent on any responsible broadcaster to ensure that output is not broadcast which may seriously impair the physical, mental or moral development of children. Furthermore, they stated that

Broadcasters should take all responsible steps to protect children by ensuring appropriate scheduling of potentially unsuitable material and eliminating some contentious material entirely where there is likely to be a large children's listenership. In determining the appropriate action to be taken, broadcasters should give consideration to the likely number of children in the audience at the time as well as the nature of the station, programme and context in which the material is broadcast.³³

Pre warnings remain important. So too does the role of parents in determining access to material which they may deem inappropriate.³⁴

Portrayal of persons and groups in society

For some, this should be included due to the risk of marginalisation through 'irrational' prejudices.³⁵ For Lynda Finneran, 'No person and this includes groups of people, e.g. of a particular faith or ethnicity, ought to be treated in a disrespectful or offensive, arbitrary manner. A group ought never be denigrated for its faith, ethnicity, etc. but (unacceptable) behaviour by groups should be of course be treated of fully, if such is in the public interest.'³⁶ The Media Studies class at NUI Maynooth argued that as this area is so wide and diverse, it should be controlled and monitored closely.³⁷

The UTV owned radio stations also supported the inclusion of this category. On this point they said:

Any codes must strike a clear balance between the protection of such persons/groups and also the ability of the broadcaster to discuss and debate, in a balanced manner, issues which may be in the public interest. Codes in this regard must not result in the censorship or significant dilution of coverage relating to individuals or groups.³⁸

Submissions were received from Schizophrenia Ireland – Lucia Foundation and the National Disability Authority (NDA). Both requested that the 'portrayal of persons and groups in society' be included. For Schizophrenia Ireland, it voiced particular concern regarding 'the often-stigmatising portrayal of people with mental health difficulties in programming material.'³⁹ The NDA believed that 'It is...important to ensure that the Code of Programme Standards recognise the impact of negative and misrepresentative descriptions and portrayals of people with disabilities and support

³³ Submission on behalf of the UTV owned radio stations: e8, 2.

³⁴ Submission on behalf of the UTV owned radio stations: e8, 3.

³⁵ Orla Halpenny: e3, 1.

³⁶ Lynda Finneran: web 376.

³⁷ Media Studies class, NUI Maynooth: h31, 8.

³⁸ Submission on behalf of UTV owned radio stations: e8, 3.

³⁹ Schizophrenia Ireland – Lucia Foundation: h26, 1.

the usage of descriptions which reflect the social model of disability in all programmes particularly news reports.’⁴⁰

Portrayal of drugs, alcohol and solvent abuse

It was generally believed that this should be included due to the possible imitative effects.⁴¹ The UTV owned radio stations expressed the following view:

As with all highly sensitive issues, the portrayal of drugs, alcohol and solvents in broadcasting is dependent upon context. The coverage of such activities within a news and current affairs programme or documentary is obviously very different from entertainment led programming. Broadcasters must be able to broadcast information and engage in debate on the above issues but must not condone, encourage or glamorise the use of illegal drugs or the misuse/abuse of drugs or alcohol except where justified from an editorial perspective.⁴²

News and current affairs

Peter Feeney asked again that a distinction be made between depiction in drama and news and current affairs reporting on violence and sexual material.⁴³ The Church of Scientology expressed a similar view: ‘The accuracy of News programmes, current affairs & documentaries is far more important than fictional programmes, as they commence with the implication of objectivity and even-handedness.’⁴⁴

The UTV owned radio stations contended that news and current affairs programming on radio are currently of a very high standard due to current modes of self-regulation. ‘It must also be appreciated that the majority of independent radio services contain in excess of 60% music content, thereby limiting the potential of news and current affairs to cause offence.’ Based on these factors, they wondered is there a need for specific treatment within the codes.⁴⁵

Imitative behaviour

Support was expressed that this category be included given the potentially high occurrence of imitative behaviour. Particular caution when dealing with suicide was requested.⁴⁶ According to Phantom FM, however,

Risk of imitative behaviour should not be a reason to restrict the broadcasting coverage of contemporary behavioural aspects. Where these aspects concern what could be considered as potentially dangerous or offensive actions, it is more likely that their portrayal would actually discourage imitative behaviour. There may be some consideration

⁴⁰ National Disability Authority: e12, n.pag.

⁴¹ Orla Halpenny: e3, 1.

⁴² Submission on behalf of the UTV owned radio stations: e8, 3.

⁴³ Peter Feeney: web 356.

⁴⁴ Church of Scientology: h25, 7.

⁴⁵ Submission on behalf of the UTV owned radio stations: e8, 3.

⁴⁶ Orla Halpenny: e3, 1.

however for specific information to be broadcast regarding such aspects – warnings that imitation could cause personal harm and/or the announcement of contact details for specific case support agencies.⁴⁷

Other comments

TV3 stated that it did not favour such a specific approach. It chose to reiterate points made earlier that the BCI should instead apply a general standard rather than identify particular categories.

2. Are there other areas/issues that you believe should be included in the code? Please provide a rationale for your response.

Few people chose to respond to this section. Three new points, however, emerged in this respect. First, it was argued that the reporting of disasters should be included. One respondent opined that ‘a particular historical event which caused great trauma to a people/nation such as genocide, famine, or terrorism, or the persons responsible for such events, should never be referred to in a flippant manner, or as part of a comedy programme, no matter how vague the reference.’⁴⁸ Another respondent believed that this should be included as a category given the often intrusive nature of such reporting.⁴⁹

Depiction of sexual activity was the second point highlighted for inclusion.⁵⁰ For another respondent this should include ‘nudity’.⁵¹

And thirdly, song lyrics were singled out for consideration. The UTV owned radio stations contended that, while this was not particularly problematic at the moment due to caution being applied by individual radio stations, it could be in the future. Consequently, it argued that song lyrics be included in the development of the code.⁵²

2.4. Concluding remarks

Categories which could fall within the ambit of the code devised were introduced in this section and participants were invited to discuss which areas might be included and/or excluded. In general, support was voiced for including all categories specified with TV3 being alone in arguing against such a specific approach and in favour of the application of more general standards. At the core of the reasons given was the view that anything with the potential to demean the dignity of a person and/or group should not be permitted. Gratuitous representations were also seen as unacceptable.

Themes which recurred throughout submissions received were in evidence in this section as the following examples demonstrate. Firstly, the need to draw a distinction between factual representations and fiction was identified. Secondly, it was argued that while general standards should be applied to both media, it was still necessary to differentiate between radio and television as appropriate in many instances. The third

⁴⁷ Phantom FM: e7,1.

⁴⁸ Paul Macdonald: web 348.

⁴⁹ Orla Halpenny: e3, 2.

⁵⁰ Peter Feeney: web 356.

⁵¹ Noel Gorman: e6, n.pag.

⁵² Submission on behalf of the UTV owned radio stations: e8, 1.

theme referred to children's programming, where it was generally accepted that precautions and regulations should apply but not uniformly. Instead recognition should be given to the different stages of development prior to age eighteen. A fourth theme referred to music lyrics and the perceived need that these be considered and if necessary, guidelines be devised. And finally, the partnership which must ensue between broadcaster and parent in guarding what children watch and/or listen to was referred to. Many of these themes formed the basis of issues discussed in the following section of this review.

3. Context

3.1. Introduction

Factors influencing how programming material may be considered offensive or inciting harm were introduced in this section. How material is received by viewers and/or listeners is not set. It changes over time and according to a number of variables which apply at any given time; for example, to how, where, when and by whom programmes are received. Viewed collectively, the BCI referred to this as the ‘context’ in which programme material is broadcast and received.

The *Code of Programme Standards* will not attempt to produce rules for every possible type of programme or every possible type of material that has the potential to be broadcast. The aim of the code is to foster responsibility, not to stunt creativity and the development of themes. Consequently, the BCI aims to devise a range of principles and broad rules which may be applied to every situation. These will have to take context into account as this is something consumers of broadcast media do on a consistent basis.

Consideration of all these points brought the BCI to a juncture whereby the question ‘what is context?’ required clarification. Through its research, the BCI identified factors having the potential to influence how a viewer or listener perceives programmes.¹ These were as follows:

- time of broadcast;
- type of programme;
- channel type/service type;
- prior information/warning;
- editorial justification;
- likely size and composition of audience.

Such findings were proposed in *Phase One Consultation Document* as a basis for further discussion. While acknowledging that it was a combination of these factors which influenced the context in which consumers receive broadcast media,

¹ For further information, see RBM Quinn (2005), *Taste and Decency – a review of national and international practice* Dublin: BCI, 15-18.

participants were advised that this list was not set in stone and would be revised according to views expressed during this consultation.

Factors identified were considered separately and questions asked under each heading. This format is duplicated hereunder.

3.2. Time of broadcast

The time at which material is broadcast can directly affect how it is received. A controversial programme being broadcast in the morning may be deemed unacceptable while the same programme broadcast after 9pm, for example, may be considered topical, exciting, thought provoking and challenging.

The suitability of programmes might also be assessed in terms of the context in which they are broadcast. Here one is referring to the scheduling of programmes and a determination of whether or not the programme broadcast is appropriate to the programmes going out before and after it. Children, for example, might see/hear unsuitable material if they tune in early for a programme aimed at younger viewers.

3.2.1. Questions asked

Taking these factors into account, the BCI posed three questions. These were presented as follows:

1. Does the time at which a programme is broadcast influence whether the material on that programme could be seen as offensive or harmful and are there particular times of day (day-parts) during which you believe additional precautions should apply? If so, what are these times and please outline why you believe additional precautions should apply?
2. Are there any differences between radio and television in this regard?
3. Does time of broadcast become a less important consideration for channels that are subscription only or encrypted?²

Please provide a rationale for your responses.

3.2.2. Feedback

1. *Does the time at which a programme is broadcast influence whether the material on that programme could be seen as offensive or harmful and are there particular times of day (day-parts) during which you believe additional precautions should apply? If so, what are these times and please outline why you believe additional precautions should apply?*

Of the day parts identified from 6am to midnight, the vast majority felt that no additional precautions were needed during the 6am to 9am slot. Care should be taken between 9am and 9pm but no additional precautions to apply after this time. Joanna

² Encryption means that the viewer, having paid to access a certain channel or channels, does so by using his/her password or another designated security device.

O’Riordan believed that ‘there is a general presumption that programming before 9 is suitable for children and it should be guaranteed that this is the case in practice.’³ Acknowledgement was made to the fact that patterns are not set but do change according to the seasons and school versus holiday times.⁴ In addition, it was felt that while less protection was needed after 9pm, material for a more mature audience should trickle in rather than be an avalanche. While agreeing with points expressed, the Church of Scientology wondered how relevant this was due to the fact that children do not go to bed at specific times and given the huge numbers of children who watch television unsupervised in their bedrooms.⁵ The Media Studies class, NUI Maynooth believed that ‘As a matter of principle, programmes should always be scheduled with an awareness of the likely audience in mind. Great care should be exercised to avoid shocking or offending the target audience.’⁶

Reference was also made to radio. Here Fiona Hodge said that ‘Children going to school in a car with their parents or on a bus are listening to the radio...Any time when children may potentially be listening to radio should have additional precautions.’⁷ Laura Flannery voiced her concern regarding the retransmission of shows at different times of the day. She referred to a show which might be broadcast in late evening to a suitable audience but rebroadcast the next day at a much earlier time to a differently composed set of viewers.⁸ The National Disability Authority (NDA) stated that consideration will need to be given to these variables in applying a programming timing structure to the different forms of media. Furthermore, it said it

would broadly support the timing structure in terms of the split between children and adult programming. This should be applied to both television and radio as one or other may be the preferred medium for a person with a sensory disability for example a blind person may listen to more radio and a person who is deaf may choose television as a medium and a person who is hard of hearing may prefer access to teletext over radio.⁹

Máire P. White argued against the use of day parts. She believed that the time of programme or age/background of the viewer should not influence whether the material was seen as offensive or harmful.¹⁰ Frank Murphy expressed similar concerns:

The timing of programmes should not greatly influence the basic question as to whether they are offensive or harmful. Clearly, more discretion is necessary for the protection of the young or immature if offensive or harmful programmes are being broadcast. The problem, however, cannot be solved

³ Joanna O’Riordan: web 393.

⁴ See, for example, Tom Ascough: web 349; Lolo Robinson: web 350.

⁵ Church of Scientology: h25, 8.

⁶ Media Studies class, National University of Ireland Maynooth: h31, 10.

⁷ Fiona Hodge: web 353.

⁸ Laura Flannery: web 372.

⁹ National Disability Authority: e12, n.pag.

¹⁰ Máire P. White: h2, 8.

merely by requiring that certain programmes should not be transmitted before 9pm. Not all children are in bed by that time. The content of the programme is the issue, not the timing.¹¹

TV3 supported 9pm as a watershed, believing this to be an internationally accepted convention. While caution must be applied earlier in the day, it contended that content must adjust to suit an older audience profile as the day progresses. Stating that ‘this is entirely in line with current “generally accepted standards”, TV3 argued that programmes after 7pm should be able to have content not suitable for the very young and gives soap operas as an example.¹²

Peter Feeney (Head of Public Affairs Policy, RTÉ) referred to the current situation at RTÉ vis-à-vis television.¹³ In addition, he made reference to radio when he stated that a more flexible approach was adopted but attention was paid to times when children could be listening ‘e.g. up to 0900 on weekday, school vacation time during the day and week end daytime.’¹⁴ Phantom FM expressed its opinion thus:

With regard to television programming it could be argued that some content has greater potential to offend during daytime broadcasting. Society has generally accepted the guideline 9pm watershed and this watershed is generally observed by Irish TV broadcasters. We do not believe that additional precautions should apply to particular times of day.¹⁵

The UTV owned radio stations also referred to the difference between radio and television in this instance. While television has tended to operate on the basis of a watershed, they believed that

radio has operated more specific self-regulation based on times of day, specifically in relation to children. Independent radio operators have tended to be more cognisant of items which may cause offence when children are particularly likely to be listening i.e. during the morning and evening school run, school holidays etc. We have no difficulty in such times being taken into account in the development of the Codes. Again, we would stress that as radio is free to air and easily accessible, the role of parents should not be overlooked in this regard.¹⁶

¹¹ Frank Murphy: h10, 1-2.

¹² TV3: h1, 3.

¹³ Peter Feeney (Head of Public Affairs Policy, RTÉ): web 356.

¹⁴ Peter Feeney: web 356.

¹⁵ Phantom FM: e7, 3.

¹⁶ Submission on behalf of the UTV owned radio stations: e8, 1.

2. *Are there any differences between radio and television in this regard?*

Mixed opinions were expressed in this regard. Many people felt that significant differences existed between the two media albeit for different reasons.¹⁷ Some believed that the power of the visual was far stronger than the power of the aural. Paul Macdonald felt that 'There is a difference between radio and television in this regard because where children may not grasp the meaning/content on a radio broadcast due to the lack of visual image, they can be affected by television because the visual image which they will absorb in spite of not absorbing the aural content.'¹⁸ This led some to conclude that 'Stricter guidelines are needed for television as the visual impact is generally greater than auditory impact.'¹⁹ For Lynda Finneran, caution must be applied due to the fact that children can be incidental listeners.²⁰

Two submissions highlighted the impact of music lyrics and believed that due caution should be applied.²¹ The Communications Law class at NUI Galway believed that 'music which has offensive lyrics may influence young people, and should be omitted from such music or played at times of the day when children are least likely to hear them.'²² For the Media Studies class at NUI Maynooth, however, the impact of the music video on television outweighed the effect of lyrics played on radio.²³

Some argued that no real difference could be perceived between radio and television. For Tom Ascough, 'Children are within reach from radio during the same hours as TV.'²⁴ Fiona Hodge echoed this view saying that 'hearing or seeing unsuitable material is very damaging for children.'²⁵ Consequently, it was argued that restrictions should apply equally to radio and television.²⁶

Broadcasters proffered a range of views. For Phantom FM, significant differences exist between television and radio due to the power of the visual, believing that music and spoken word presentation 'is much less likely to cause offence during any day-part providing the material is appropriate for the specific target audience.'²⁷ Recognising that due caution should be applied, it contended that there was no necessity to prescribe additional precautions at different times for radio programmes.²⁸ The UTV owned radio stations also perceived differences between the two

with it being much more likely that offence, be it gratuitous or accidental, be caused through the medium of television. Radio is of the spoken word and consequently, has less inherent risk.

¹⁷ See, for example, Anne Walsh: web 340; Paul Macdonald: web 348; Siobhan Symons: web 367; Mary Kelliher: web 388; Stephen Cardy: web 390; Carmel Killeen: 12; Family and Media Association: h32, 3; Media Studies class, NUI Maynooth: h31, 13.

¹⁸ Paul Macdonald: web 348.

¹⁹ Bernadette Kiely: web 371.

²⁰ Lynda Finneran: web 376.

²¹ Media Studies class, NUI Maynooth: h31, 13; Communications Law Class, Masters in Public Law, National University of Ireland Galway: e10, 24.

²² Communications Law class, Masters in Public Law, NUI Galway: e10, 24.

²³ Media Studies class, NUI Maynooth: h31, 13;

²⁴ Tom Ascough: web 349.

²⁵ Fiona Hodge: web 353.

²⁶ See, for example, Annette Cleary: web 358.

²⁷ Phantom FM: e7, 3.

²⁸ Phantom FM: e7, 3.

Radio is however, a much more encompassing, flexible and portable medium than tv and therefore it is not as easy to restrict access through the setting of watersheds, encrypting etc.²⁹

TV3 expressed the view that radio may be somewhat different ‘but does tend to be very demographic specific, which can be used as an alternative to time profiling.’³⁰ Peter Feeney argued that the concept of the watershed does not work on radio ‘as most listening takes place during the day. Post 2100 audiences in radio can be significantly younger than day time audiences.’³¹ Orla Halpenny made a similar point when she asked that restrictions be applied to radio during school-run times in the morning and afternoons.³²

3. Does time of broadcast become a less important consideration for channels that are subscription only or encrypted?

Many argued that the time of broadcast was no less important for channels that are subscription only or encrypted.³³ One respondent remarked that ‘While these channels are, presumably, watched by adults, we should not therefore automatically be exposed to low standards.’³⁴ Paul Macdonald highlighted the role parents play in what children have access to:

It matters little if a channel is subscription only. Children will be exposed to questionable material anyway. So the timing issue would be treated the same. If a channel is encrypted, society must depend on the moral integrity of the adults present with the children in order to protect them from questionable material so the timing issue should be treated the same.³⁵

A significant number of other respondents echoed this view.³⁶ John Hennessey, for example, believed that the fact that such services are chosen and paid for by adults and if something offends, they have the option of cancelling that subscription. ‘It is also,’ he continued, ‘their own responsibility to familiarise themselves with the channel’s watershed policy.’³⁷

According to Laura Flannery, ‘If a channel explicitly states that they will air adult content (sexual or violent), and provides a mechanism (like PIN) to prevent children accessing that station, the time and content of the broadcast becomes irrelevant.’³⁸

²⁹ Submission on behalf of the UTV owned radio stations: e8, 4.

³⁰ TV3: h1, 3.

³¹ Peter Feeney: web 356.

³² Orla Halpenny: e3, 2.

³³ See, for example, Media Studies class, NUI Maynooth: h31, 14; Family and Media Association: h32, 3.

³⁴ Anne Walsh: web 340.

³⁵ Paul Macdonald: web 348.

³⁶ See, for example, Laura Flannery: web 372; Lynda Finneran: web 376; Orla Halpenny: e3, 2; Stephen Cardy: web 390; Mary Moore: web 391; Media Studies class, NUI Maynooth: h31, 14; Communications Law class, Masters in Public Law: NUI Galway: e10, 26.

³⁷ John Hennessey: web 362.

³⁸ Laura Flannery: web 372.

Brendan O'Regan would agree, its acceptability being dependent on such services being reserved for adults through codes and passwords.³⁹ Terry Gillespie noted a distinction in terms of the services being offered. Agreeing that the time of broadcast may not be particularly relevant for certain special interest channels, he stated that 'For channels that provide "General Entertainment" the time of broadcast is important. There is probably no difference between subscription or encrypted channels and mass transmission television in this regard.'⁴⁰ Other respondents concurred. The Communications Law class in NUI Galway, for example, stated that '...although we submit that time of broadcast becomes a less important consideration for subscription and encrypted channels we consider it essential that encrypted or subscription based channels provide adequate protection against harmful and offensive material being accessed by users other than the subscriber themselves or young and vulnerable people.'⁴¹

Broadcasters believed that the time of broadcast was less important when it came to subscription and encrypted services. Peter Feeney contended that the public have open access to channels which are not encrypted and therefore different standards must apply.⁴² For TV3, 'if a programme is available on a cable/satellite package that there should be a presumption that it is aimed towards a more specific audience and should be judged with respect to that audience. The reality is that subscription platforms tend not to be accessible to the very young or old and parental control devices can be used.'⁴³ Phantom FM echoed these views in some respects, believing that subscription was voluntary and thus 'The responsibility for access to such services is then attributed to the adult subscriber.'⁴⁴

3.3. Type of programme

The 'type of programme' viewed and/or listened to often affects people's attitudes towards individual programmes. What may be acceptable to one type may be viewed as inappropriate in another; for example, extreme violence in a late night thriller versus extreme violence in a popular soap opera. If subject material defies the viewer and/or listener's expectations or is out of the norm of what is usually featured in a particular programmes, it may be deemed offensive in a specific instance.

3.3.1. Question asked

The BCI asked one question in this respect. This was as follows:

1. In considering whether programme material is offensive, should consideration be given to the type of programme in which it featured?

Please provide a rationale for your response.

³⁹ Brendan O'Regan: web 394.

⁴⁰ Terry Gillespie: e5, 4.

⁴¹ Communications Law class, Masters in Public Law: NUI Galway: e10, 26.

⁴² Peter Feeney: web 356.

⁴³ TV3: h1, 3.

⁴⁴ Phantom FM: e7, 4.

3.3.2. *Feedback*

Of the twenty two people who responded to this question, eighteen answered that yes, the type of programme should be taken into account. It was acknowledged that what might be acceptable in one programme could be deemed unacceptable in another.⁴⁵ Orla Halpenny, for example, stated that

A defamatory view of a particular religious or ethnic group would be unacceptable on a comedy show, but could possibly be legitimate in the context of a documentary or serious film of drama, provided there is an attempt to balance the programme with another view and as long as the laws concerning incitement to hatred, defamation and slander are observed.⁴⁶

Calls were made for pre-warnings to be issued as appropriate.⁴⁷ For Stephen Cardy, certain material is offensive even when part of a documentary or a drama which is clearly signalled as such. ‘That is fact. Therefore, the type of program in which it is featured, should be very clearly labelled, so as to avoid being ‘caught off guard’ or viewing by minors of what is inappropriate/unacceptable material.’⁴⁸ Joanna O’Riordan believed there should be an obligation to highlight content concerns on a more consistent basis to inform viewer decision making. She asked that the rating system currently used for films be extended accordingly.⁴⁹ The Communications Law class at NUI Galway argued that ‘while programme type is again necessary in legitimising or de-legitimising offensive language, it is not the sole factor.’ For them the time of broadcast and the presence of a pre-broadcast warning were also important.⁵⁰

TV3 agreed that consideration should be given to programme type. For this television station, it was deemed obvious that certain genres would feature certain actions – for example, horror films would contain some degree of violence. It argued, however, ‘that if a programme is obviously a documentary about prostitution, those easily offended by such material should not watch it.’⁵¹ For Peter Feeney, it was essential that a distinction be drawn ‘between factual/documentary/news/current affairs and entertainment/drama.’⁵² Agreeing that the type of programme should be taken into consideration, Phantom FM also believed it important that

Listeners or viewers should make a decision to listen to or view a programme with consideration of the general ethos of the service and/or particular subject matter of the programme. There should be little scope for offence to be taken if these aspects are made clear to the listener or viewer either generally through appreciation of the service being viewed or

⁴⁵ See, for example, Paul Macdonald: web 348.

⁴⁶ Orla Halpenny: e3, 2.

⁴⁷ See, for example, Paul Macdonald: web 348; Bernadette Kiely: web 371.

⁴⁸ Stephen Cardy: web 390.

⁴⁹ Joanna O’Riordan: web 393.

⁵⁰ Communications Law class, Masters in Public Law, NUI Galway: e10, 34.

⁵¹ TV3: h1, 4.

⁵² Peter Feeney: web 356.

listened to, or particularly through specific programme announcements made before or during the broadcast.⁵³

According to the UTV owned radio stations, the type of programme on which material is broadcast is key in determining whether offence has been knowingly caused. Acknowledging that viewers and listeners have expectations regarding certain genre, they expressed a belief 'that listeners have the primary role in deciding their listenership patterns and that in most cases, offence should not be deemed to have been caused, where there was a reasonable expectation that the show/feature would be as broadcast.' For them, there is greater potential for offence where the station type, programme or feature vary from their norm.⁵⁴

Fiona Hodge was among those who believed programme type should not be a determinant. She expressed her view as follows:

I don't think it makes a difference what type of programme it is. Offensive material is offensive material – the problem is that the type of storylines in soap operas are soaked up by children/teenagers and they think this is 'normal' – i.e. sex outside marriage, affairs, use of coarse language etc. when in fact it causes so much trauma and distress in their lives.⁵⁵

Lynda Finneran expressed a similar view. For her, 'If something is offensive (morally impermissible), it is always so. The act (verbal etc.) is wrong in itself.'⁵⁶

3.4. Channel type/service type

Consumers of broadcast media have expectations of certain radio and television stations. Such a factor can influence whether or not programming material is deemed offensive. Where they expect certain services offered to be more explorative and challenging, other services received are expected to be more middle-of-the-road in terms of material broadcast and audience attracted. Offence may also be caused when a viewer and/or listener visits a service unfamiliar to them where content is generally appreciated by its target audience.

Research has found that people also have different expectations vis-à-vis free-to-air channels versus subscription services.⁵⁷ If a viewer has chosen to access a particular subscription channel and has done so in the knowledge of the style of material broadcast by that channel, it may be that he or she will be more accepting of potentially offensive material broadcast. Conversely, the same material broadcast on a free-to-air channel may be regarded as offensive by viewers who expect more middle-of-the-road content which would have more mass appeal.

⁵³ Phantom FM: e7, 4.

⁵⁴ Submission on behalf of the UTV owned radio stations: e8, 5.

⁵⁵ Fiona Hodge: web 353.

⁵⁶ Lynda Finneran: web 376.

⁵⁷ This currently refers to television only.

3.4.1. Questions asked

The BCI asked two questions. These are identified hereunder.

1. In determining whether programme material is offensive, should the type of channel/service on which it appeared/was aired be taken into consideration? Please provide a rationale for your response?
2. Should a differentiation be made between free-to-air and subscription channels? If yes, please provide a rationale as to why.

3.4.2. Feedback

1 In determining whether programme material is offensive, should the type of channel/service on which it appeared/was aired be taken into consideration? Please provide a rationale for your response?

Of those responding, equal scores were recorded for and against whether or not type of channel/service on which material appears should be taken into consideration.⁵⁸ Of those agreeing, a sample of views expressed is as follows. Terry Gillespie stated that while one might expect to find porn on a porn channel, religion on a religious channel, it is the more generally based channel which is most problematic. ‘I suspect that all Irish transmissions would classify themselves as “General Entertainment” suitable for general family viewing. Consequently, the type of channel is important.’⁵⁹ Another respondent believes that it is essential ‘because the public expects different standards from different channels.’⁶⁰

Broadcasters agreed that the type of channel/service on which material appears should indeed be taken into account. For TV3, however, this should be only one factor among many:

A station should not be able to avoid all responsibility by station that it is for example only after males ages 18-35. Likewise a general channel should be able to show material that might be seen by some as offensive if it after [sic] the watershed and contains appropriate warning. In accordance with license obligations, general channels must be able to satisfy a wide diversity of audience, which by definition means it, will have to rely upon warning and watershed. This point can also be made in regard to subscription channels, although obviously if a channel is of a pay TV variety, its should be [sic] entitled to market to a certain audience, within the general confines of the legal framework.⁶¹

According to Peter Feeney, public expectation plays an important part in determining what is suitable for transmission. ‘This allows some possibility of catering for diverse audiences and at the same time provides some measure of protection for vulnerable

⁵⁸ Of the twenty two responding to this question, eleven agreed while the other eleven disagreed.

⁵⁹ Terry Gillespie: e5, 4.

⁶⁰ Communications Law class, Masters in Public Law, NUI Galway: e10, 35.

⁶¹ TV3: h1, 4.

viewers/listeners.’⁶² Phantom FM believed that the type of channel/service should be taken into account in determining if the material should be considered offensive. ‘This consideration is necessary to determine the context in which the programme, or feature item, was broadcast.’⁶³ Furthermore, it said that

with regard to music radio programming, ‘swear word lyrics’ presented in context and within the genre of the particular service being provided for, will not cause offence to the service target audience. Broadcasters who risk alienating their target audience will not survive in the commercial marketplace and therefore broadcasters are in the best position to self-regulate programming content for their specific target market.⁶⁴

For the UTV owned radio stations, ‘...the type of channel/service should provide listeners with a reasonable expectation as to what to expect from it’s [sic] broadcasts. It is then incumbent on the listener to make their listenership choices to ensure that the ongoing style of the channel/service does not cause them offence.’⁶⁵

Some felt that the type of channel/service on which material was broadcast could not be the sole determinant in this instance. For Annette Cleary, ‘...I feel we as parents should be happy in the knowledge that our children are not watching things that are unsuitable for their age on free to air channels or subscription channels.’⁶⁶

2. *Should a differentiation be made between free-to-air and subscription channels? If yes, please provide a rationale as to why.*

Of those responding to this question, there was a clear split between those who agreed and disagreed.⁶⁷ Of those agreeing, it was believed by some to be acceptable so long as channels containing offensive material be grouped together and not lumped in or around general entertainment channels.⁶⁸ One respondent believed this to be acceptable if appropriate protective measures were in place – for example, the use of PIN numbers to access subscription channels.⁶⁹ This point was echoed by the Communications Law class in NUI Galway when it said

In the provision of services, subscription service providers must take all reasonable steps to protect people under eighteen. Subscription service providers should ensure that their services are adequately protected so as to prevent under eighteens from viewing inappropriate material. Subscription service providers must also ensure that information is provided about programme content that will assist to assess its suitability for children.⁷⁰

⁶² Peter Feeney: web 356.

⁶³ Phantom FM: e7, 4.

⁶⁴ Phantom FM: e7, 4.

⁶⁵ Submission on behalf of the UTV owned radio stations: e8, 5.

⁶⁶ Annette Cleary: web 358.

⁶⁷ The total was eighteen with nine agreeing and nine disagreeing.

⁶⁸ Tom Ascough: web 349.

⁶⁹ Laura Flannery: web 372.

⁷⁰ Communications Law class, Masters in Public Law, NUI Galway: e10, 41.

Those disagreeing felt it was imperative that the same rules be applied universally.⁷¹ Terry Gillespie, however, applied a different type of distinction, ‘between “General Entertainment” channels and “Special interest” channels. These can be spread across both free to air and subscription channels.’⁷² While accepting that the same guidelines be applied to both free-to-air and subscription channels/services, one respondent argued that a ‘differentiation should be made between free-to-air/subscription channels and “pay per view” or “encrypted” channels or services. This is because in the case of ‘pay per view’ or encrypted channels, people are aware of exactly what they are going to be exposed to; they pay for/request the channel based on exact information regarding it’s content.’⁷³

TV3 provided one answer for Questions 10 and 11. For it, this can be only one factor among many. A general channel should be allowed show material suited to different demographics, programming to suit the tastes of particular audiences. ‘This point can also be made in regard to subscription channels, although obviously if a channel is of a pay TV variety, its should be [sic] entitled to market to a certain audience, within the general confines of the legal framework.’⁷⁴

Phantom FM argued in favour of making such a distinction because supply of subscription channels can only be contracted to adults, who have presumably evaluated the service and have decided that they will not be offended by its content. ‘With regard to free to air services’, it continued, ‘programming material should be considered in the context of the service type being provided and with regard to state legislative requirements. Stations should be free to work within those parameters while tailoring content to appeal to their specific target audience.’⁷⁵ The UTV owned radio stations believed that ‘In a radio context free to air services tend to broadcast predominantly live output thereby not providing service operators the opportunity to edit potentially offensive items prior to broadcast.’⁷⁶

3.5. Prior information/warning

Viewers and/or listeners are often offended when a programme contains elements which they were not expecting; for example, extreme violence in the middle of a period drama. It is believed, however, that the potential for such offence can be reduced if pre-broadcast information or warnings are transmitted. This allows the consumer to make more informed choices vis-à-vis the programme and who it might be suitable for. In the context of devising the *Code of Programme Standards*, the consultation document asked if the provision of pre-broadcast information should be taken into account when assessing whether or not a broadcaster is in breach of the code.

⁷¹ See, for example, Paul Macdonald: web 348;

⁷² Terry Gillespie: e5, 5.

⁷³ Media Studies class, NUI Maynooth: h31, 17.

⁷⁴ TV3: h1, 4.

⁷⁵ Phantom FM: e7, 5.

⁷⁶ Submission on behalf of the UTV owned radio stations: e8, 5.

3.5.1. *Question asked*

One question was asked in this respect. This was as follows:

1. In assessing whether material is harmful or offensive, should the existence of a prior warning or the provision of information about the content of the programme to the viewer or listener be taken into account?

Please provide a rationale for your views.

3.5.2. *Feedback*

The theme of a pre-warning was raised on a number of occasions prior to this question being asked. Of those replying specifically to this question, an overwhelming majority believed that a prior warning or pre-broadcast information should be provided to allow the viewer or listener to make an informed decision.⁷⁷ According to John Hennessey, 'If, after a warning, a viewer chooses to watch, it is a reasonable assumption that they are not offended by the type of material warned about.'⁷⁸ The idea of having an on-screen warning was also raised, to alert viewers to content if they have switched on after the beginning.⁷⁹

Of those disagreeing, a variety of views was expressed. For some, prior warnings were not always the most effective mechanism as they are 'often missed or parents are not accompanying their children when the programme comes on.'⁸⁰ Laura Flannery continued on this theme when she said

...not everybody switches a programme on at its out-set. Many people flick from channel to channel during commercial breaks or when the program they are watching has finished. The likelihood of *all* of the people that see a particular show (either all of it or some of it) also viewing the prior warning is slim, to none. A warning message is no use to a mother/father watching television with their children to switch to a channel that is not blocked by PIN and find themselves watching sex or violence.⁸¹

Orla Halpenny also remained unconvinced of the merits of a pre-broadcast warning: 'The addition of a warning or the provision of information does not render the material less harmful, although it does allow for defensive measures to be taken, e.g. switching off or changing to an alternative channel. A simple warning is not an adequate assessment of potential harm.'⁸² Mary Moore believed that far from being a deterrent, 'prior warnings actually entice young people to watch something that they know is of a questionable nature.'⁸³ For Ray Kinsella and Michael Kinsella, 'the present "watershed" of 9pm is devoid of any meaning in today's family/societal

⁷⁷ Of the thirty responding to this question, twenty three agreed and seven disagreed.

⁷⁸ John Hennessey: web 362.

⁷⁹ Michael Sheridan: web 379.

⁸⁰ Tom Ascough: web 349.

⁸¹ Laura Flannery: web 372.

⁸² Orla Halpenny: e3, 2.

⁸³ Mary Moore: web 391.

systems. It provides no protection whatsoever for children in relation to exposure to unsuitable or inappropriate content.’⁸⁴

For TV3, ‘this method of informing viewers, along with the watershed, is the main way for F.T.A. channels to inform its audience.’ Referring to classifications applied by the Irish Film Censor, TV3 ‘believes therefore that warning and watersheds are necessary to enable general audiences see provocative programming, albeit at certain times only. TV broadcasting must be in a position to show any programming that the Censor has passed for Irish audiences, with suitable time and warnings as necessary.’⁸⁵ Peter Feeney stated that ‘A post watershed audience should have reasonable expectation that television can cope with programming only suitable for an adult audience. But schedulers are aware that younger viewers may still be watching.’⁸⁶ He contends that the best way to deal with this is to keep the audience informed of the nature of upcoming programmes and to treat the watershed in a flexible manner, with programming that is contentious broadcast later in the evening. Here Feeney noted the difference between television and radio. Arguing that such an approach does not apply to radio where transmission time is more problematic, he stated ‘Presentation announcements of the nature of upcoming programming is doubly important on radio. RTÉ’s categorisation of all television programming will be familiar to the BCI. RTÉ believes this categorisation is important and useful.’⁸⁷

Phantom FM believed that the existence of a prior warning or pre broadcast information should be taken into account in the event of a complaint being received. ‘If the listener or viewer is made aware of a content warning, they then have to make a decision whether to continue listening to or viewing the particular programme. If they are warned that offence may be caused they therefore have less reason to complain if they are subsequently offended.’⁸⁸ The UTV owned radio stations expressed the belief ‘that the ongoing style of a radio service/feature should provide reasonable expectation for listeners as to the nature of the output. If potentially offensive material which differs from the norm is broadcast, we believe that a warning regarding the potential offence which may be caused should be given.’⁸⁹

3.6. Editorial justification

Broadcasters may believe that, in order to maintain the integrity of a programme, certain representations are justified. Violence may therefore be considered as justifiable if it appears within a thriller or action movie. Coarse language may be acceptable in certain situations; its absence may even take from the programme. A person who objects vehemently to coarse language in one context, may accept it in another if it is considered editorially justified.

⁸⁴ Ray Kinsella and Michael Kinsella: e13, 14.

⁸⁵ TV3: h1, 4-5.

⁸⁶ Peter Feeney: web 356.

⁸⁷ Peter Feeney: web 356.

⁸⁸ Phantom FM: e7, 5.

⁸⁹ Submission on behalf of the UTV owned radio stations: e8, 6.

3.6.1. *Question asked*

The BCI asked one question in this respect. It was

1. In assessing whether or not programme material is offensive or harmful, should consideration be given as to whether the material is justified from an editorial point of view?

Please provide a rationale for your response.

3.6.2. *Feedback*

For many, this could not be considered as a factor in isolation of other factors.⁹⁰ The following views were expressed. Differences were perceived between reality and fiction, with some believing a distinction should be drawn between what is permissible in documentary versus drama. John Hennessey contended that ‘Reality may be unpalatable to some, therefore its depictions will also be offensive if realistic. This is unavoidable. The alternative would be unrealistic drama, unrepresentative reportage.’⁹¹ Editorial consideration was seen as acceptable if objective standards were applied but ‘Gratuitous violence, sex, offence is never acceptable.’⁹² Mary Dooley agreed ‘but the editorial viewpoint cannot be simply arbitrary. The question must be asked, “What did it hope to achieve?” – simply to gain popularity for the station, the ratings, i.e. an economic reason, is not enough.’⁹³

Stephen Campbell argued against a consideration of editorial viewpoint. For him, ‘Nobody has the right to tell other people what they can and cannot see. If watersheds and warnings are adopted, editorial considerations are unnecessary and draconian.’⁹⁴ Máire P. White also believed it was unsuitable: ‘Editorial justification is often the reason given to defend the presenting of “indecent, harmful or offensive” material. If it is considered to be indecent, harmful or offensive, how could anyone defend it, least of all someone in such a responsible position as an Editor.’⁹⁵

For TV3, material should always be considered from an editorial viewpoint. ‘Any form of license requirements’, it continued, ‘must as an absolute minimum provide that the broadcaster should be in a position to meet this anyway it sees fit, always within the context of general law. Free speech is enshrined within the Irish constitutions and should be respected as such.’⁹⁶ According to Peter Feeney,

Authenticity in drama, adult themes in drama are permissible – it is the gratuitous giving of offence which should not be permitted. In news and current affairs sensitivity to the audience is required, but reports should not be “sanitised”. Awareness of the more vulnerable audience potentially watching earlier in the evening should be taken into

⁹⁰ See, for example, Media Studies class, NUI Maynooth: h31, 19.

⁹¹ John Hennessey: web 362.

⁹² Joanna O’Riordan: web 393.

⁹³ Mary Dooley: e9.

⁹⁴ Stephen Campbell: web 366.

⁹⁵ Máire P. White: h2, 9.

⁹⁶ TV3: h1, 5.

consideration. Again this applies more for television with its visual imagery than radio.⁹⁷

Phantom FM believed that editorial aspects should be considered in assessing whether or not programme material could be considered offensive or harmful. For it, this factor should not be considered alone. 'Again context is an important aspect in this question and the intention to present factual or comedic representation within the previously discussed parameters (channel service, programme type, content warnings) should be considered.'⁹⁸ The UTV owned radio stations expressed the following view:

We believe that all material broadcast should be justified from an editorial point of view, otherwise it shouldn't be broadcast in the first place. Subject to the matter being in the public interest and complying with relevant guidelines such as, broadcast at an appropriate time and the issuing of advance warnings etc. then no difficulty should be caused.⁹⁹

3.7. Likely composition and size of audience

The likely composition and size of an audience is linked to other variables, most notably 'programme type' and 'channel/service type'. Certain services are aimed at specific audiences. What may be acceptable to a target audience, however, may not be acceptable to viewers and/or listeners unfamiliar with the programme or service.

3.7.1. Question asked

Here the BCI posed one question. It was as follows:

1. Should the likely composition of the audience be considered in assessing whether or not material is offensive?

Please provide a rationale for your response

3.7.2. Feedback

Of those replying, the vast majority believed that the composition and size of the audience should not be considered in assessing whether or not material was offensive albeit for very different reasons.¹⁰⁰ According to Anne Walsh, the number of viewers should not dictate whether or not something is offensive.¹⁰¹ Fiona Hodge believed the size of audience to irrelevant – 'if material is offensive, it's offensive.'¹⁰² Stephen Campbell contended that if warnings and watersheds are applied, 'it doesn't matter how many people are likely to watch.'¹⁰³ John Hennessy wondered about programmes geared towards niche audiences. Here he stated:

⁹⁷ Peter Feeney: web 356.

⁹⁸ Phantom FM: e7, 5.

⁹⁹ Submission on behalf of the UTV owned radio stations: e8, 6.

¹⁰⁰ Of the twenty six respondents, seventeen disagreed while nine agreed that audience composition should be taken into account.

¹⁰¹ Anne Walsh: web 340. See also Laura Flannery: web 372.

¹⁰² Fiona Hodge: web 353.

¹⁰³ Stephen Campbell: web 366.

Many would find “gay issues” programming offensive but that brings to mind the addage [sic] “If you don’t like it don’t watch it.” This programming would have a quite specific audience who should be excluded from the representation because the views of others differ.¹⁰⁴

Lynda Finneran believed that while broadcasters should be vigilant to the composition of an audience for a particular programme, this could never be a justification for what is ‘objectively offensive.’¹⁰⁵ Another respondent argued that while it might be possible to ascertain a clear indication of those watching a specialist channel, making those assessments regarding general entertainment channels was less clear cut and therefore less reliable.¹⁰⁶ For the Media Studies class in NUI Maynooth, ‘the composition of an audience can be a diverse group with varying susceptibility to offence.’¹⁰⁷

Arguing that such factors be taken into account, Tom Ascough stated that his decision was made ‘On the basis that it is probably fair to assume that children will form a sizeable portion of the audience from 6am – 12pm.’¹⁰⁸ The Communications Law class in NUI Galway contended that the size and composition differentials should be considered alongside other factors: ‘By taking account of the likely size and composition of the audience at a particular time the broadcaster is able to assess what is acceptable or unacceptable to that audience and can schedule its programmes accordingly, thereby reducing the risk of broadcasting offensive material.’¹⁰⁹

TV3 argued in favour of taking audience size and composition into account. It believed, however, ‘that it would be inappropriate to link these factors too closely to a programme. If a programme is, for example a soap, the presence of a “boy band” singer/actor, should not, by itself, mean that the programme should be targeted primarily at pre-teen females only.’¹¹⁰ While agreeing that audience size and composition should be taken into account, Peter Feeney believed these factors to be slightly more important for subscription channels.¹¹¹

Phantom FM believed that the likely audience for a particular programme should be given less consideration in determining if material is offensive. ‘The usual audience should be the prime consideration and if the previously discussed parameters (channel service, programme type, content warnings) are observed, then scope for offence should be limited.’¹¹² Conversely, the UTV owned radio stations contended that the likely composition and size of audiences are factors which should be taken into account when deciding whether or not material is suitable. ‘By assessing these factors, broadcasters should ensure that material is broadcast on appropriate programmes thus

¹⁰⁴ John Hennessy: web 362.

¹⁰⁵ Lynda Finneran: web 376.

¹⁰⁶ Terry Gillespie: e5, 5.

¹⁰⁷ Media Studies class, NUI Maynooth: h31, 20.

¹⁰⁸ Tom Ascough: web349.

¹⁰⁹ Communications Law class, Masters in Public Law, NUI Galway: e10, 45.

¹¹⁰ TV3: h1, 5.

¹¹¹ Peter Feeney: web 356.

¹¹² Phantom FM: e7, 6.

reducing, but not eliminating totally, the likelihood of offence and harm being caused.¹¹³

3.8. Other factors

In providing a list of factors for consideration, the BCI stressed that these were provided to precipitate discussion. Consequently, it stated that the list provided could be added to or deleted from according to views expressed in the first phase of the consultation process.

3.8.1. Question asked

The BCI asked one question. It was as follows:

1. Are there any other factors that you believe should be included which could influence how the viewer or listener perceives a programme and as a result should be included in the definition of ‘context’?

Please provide a rationale for your response.

3.8.2. Feedback

A number of respondents chose to reply to this section. The majority, however, chose to introduce viewpoints rather than identify new factors to be taken into account. What follows is a sample of comments made.

Fiona Hodge asked that soap operas carry a warning ‘because they contain so much violence, coarse language and anti-social behaviour.’¹¹⁴ To enhance a successful implementation of the code, the Communications Law class in NUI Galway stressed the importance of underpinning the process with media literacy programmes.¹¹⁵

The Church of Scientology raised two main points at this stage. Firstly, it asked what redress would be available, believing this would impact directly on broadcasters by providing an incentive to address issues of concern. And secondly, with regard to the increasing possibilities for local television channels, it asked who would monitor content broadcast in foreign languages?¹¹⁶

According to TV3, the ‘code should not be proscriptive in regard to other factors that may need to be included so as such the code should say, for example, that the following factors, without limitation, may be relevant to Context.’¹¹⁷ Both Phantom FM and the UTV owned radio stations argued in favour of self-regulation. For Phantom FM, ‘self-regulation by broadcasters with reference to target audience requirements and state legislation is preferable to a new layer of definitions and content restrictions in addition to state legislative requirements.’¹¹⁸ The UTV owned radio stations expressed the belief that up to this point ‘radio operators have self

¹¹³ Submission on behalf of the UTV owned radio stations: e8, 6.

¹¹⁴ Fiona Hodge: web 353.

¹¹⁵ Communications Law class, Masters in Public Law, NUI Galway: e10, 49.

¹¹⁶ Church of Scientology: h25, 6 and 11.

¹¹⁷ TV3: h1, 5.

¹¹⁸ Phantom FM: e7, 8.

regulated successfully with little evidence of major or ongoing problems. The radio sector has taken their duty to be responsible seriously but also realise that causing offence to listeners is not conducive to developing ongoing listenership support to the service.’¹¹⁹ They continued on to say that

In simple terms any codes and standards must provide adequate protection for members of the public from the inclusion of obviously harmful and/or offensive material in service output. It should also establish that broadcasters ensure that material which may cause offence is justified by the context of the broadcast and that adequate information is provided where it would assist in avoiding or minimising offence.¹²⁰

Ray Kinsella and Michael Kinsella would also support self-regulation. Here they said ‘Statute based regulation is always a ‘second best’ solution to ensuring that necessary standards are both defined and upheld in broadcasting. Self-regulation, based on an objective ethical perspective within the broadcasting medium, is always preferable.’¹²¹

3.9. Concluding remarks

This section considered the area of ‘context’. Factors influencing how programme material may be considered offensive or inciting harm were introduced albeit acknowledging how material is perceived and/or received is rarely uniform.

Discussion on applying precautions during certain day parts revealed a general opinion to regulate between 9am and 9pm with less restriction being applied for the 6am to 9am slot and after 9pm. Caution was needed between 9 and 9 due to the potential for children and vulnerable people to be watching television. It was acknowledged that children’s viewing patterns are not set but change according to seasons and holiday time. Consequently, it was asked that such shifts be reflected in the level of regulation applied. The role parents play in what their children watch, listen to and can access was referred to once again.

Significant differences were perceived between radio and television in this regard. While it was accepted that radio was in need of regulation, the day parts chosen for television did not transfer neatly to radio where different listening patterns were discernible. In particular, it was stressed that while more adults watch television after 9pm, more young people listen to the radio at that time. There were those who argued in favour of more regulation for television compared to radio as the visual was seen as being more powerful and therefore having greater impact than aural content. In addition, it was highlighted that there are greater difficulties in restricting access to radio as was sometimes possible for television through the determination of watersheds, encryption, etc.

¹¹⁹ Submission on behalf of the UTV owned radio stations: e8, 1.

¹²⁰ Submission on behalf of the UTV owned radio stations: e8, 1.

¹²¹ Ray Kinsella and Michael Kinsella: e13, 3..

The opinion was expressed that subscription and encrypted channels might be treated differently from free-to-air as these were paid for, leaving people the option of cancelling the subscription as desired. It was also believed that if it was a subscription service, it was aimed at a specific audience type and should therefore be assessed with a view to that audience.

It was generally accepted that if subject material defies viewer/listener expectation, it may be deemed offensive. The majority of respondents felt, however, that the type of programme should be taken into account when making assessments. Again it was requested that a distinction be drawn between factual representation and fiction.

It was accepted that viewers and/or listeners often have different expectations regarding certain channels and service type. Generally based channels were considered most problematic due to the varied audiences they can attract. The type of channel and/or service was therefore considered important in assessing potentially contentious material.

A split in opinion was most noticeable on whether or not differentiation should occur between free-to-air and subscription services. Some respondents believed that so long as protective measures were in place, differentiation should occur. Those who disagreed argued that the same rules should apply irrespective of type of service.

Regarding the provision of prior warnings and/or pre-broadcast information, it was believed that people are often offended if not they are expecting to see or hear something. Pre-broadcast warnings and information informs decision making on behalf of the consumer but a foolproof approach it is not. Such precautions do not apply efficiently to television or radio with viewers/listeners drifting in and out of programmes and services.

While some respondents accepted editorial justification for allowing contentious material to be broadcast, not everyone agreed. The majority believed, however, that this one factor which could not be used alone but must be linked to others in making an overall assessment. Once again it was requested that a distinction be made between fact and fiction as it was believed to be particularly relevant in this instance.

The size and composition of the audience was the last factor to be considered. Here the majority of respondents believed that it was not applicable, that if material was offensive this factor would have no bearing. Others argued that if warnings were applied, and people chose to watch/listen to a programme, then audience composition was not necessary. Some believed that it was up to broadcasters to make this assessment and to schedule accordingly.

* * * * *

Factors influencing how programme material may be considered offensive were introduced in this section. These were provided to precipitate discussion, not to dictate debate. While differences of opinion were perceived throughout, general agreement did occur. The majority of respondents accepted that assessment of contentious material cannot be assessed according to one aspect but a range of criteria must be applied to make an overall determination of whether material is or is not acceptable.

Concluding remarks

Following the format of the *Phase One Consultation Document*, this report traced through opinions proffered by those responding to the consultative process. A variety of views was visible with no defined camps of opinion being clearly discernible in each instance. Information received was spread out over all questions but it was Question 4 which attracted most attention.¹

The first section of this review considered the guiding principles and objectives put forward by the Broadcasting Commission of Ireland (BCI). The majority of respondents voiced support for their acceptance. Suggestions were made that additional objectives be included while some respondents asked that certain social groups be specified in the aims espoused. A rule to inform viewers and/or listeners of potentially contentious material was also proposed.

Section Two addressed the ‘scope’ of the code. All areas which could fall within the code were introduced at this point and the opportunity was given to participants to decide what they wanted included/excluded. Areas accepted will feed into the second phase of the consultation process by providing broad headings under which more detailed discussion can occur. In general, there was support for including all categories specified with only one respondent arguing against such a specific approach and in favour of the application of more general standards.

The final section considered the area of ‘context’. Factors influencing how programme material may be considered offensive or inciting harm were introduced. Discussion centred on a range of points which were as follows:

- time of broadcast;
- type of programme;
- channel type/service type;
- prior information/warning;
- editorial justification;
- likely size and composition of audience.

¹ Question 4 asked which areas should be considered for inclusion in the *Code of Programme Standards* and provided a list of headings to encourage, and direct, discussion.

Difference of opinion was in evidence on all points discussed. It was not possible, however, to neatly categorise arguments made according to group belonged to. Instead, they were found across all submissions received.

* * * * *

Throughout this review, seven themes were recurring. Principally, it was argued that while general standards should be applied to both media, it remained necessary to differentiate between radio and television in many instances. Secondly, while factors were considered individually, the majority of respondents believed that assessing against a single criterion should not occur, that all factors must be considered in making an accurate determination. It was also acknowledged that assessing against even a combination of some or all factors could not eliminate every possibility for offence. Thirdly, the belief was expressed that parents and broadcasters have a dual responsibility regarding what children watch, listen to and can access. The fourth theme centred on children's programming. It was generally accepted that precautions and regulations should apply to this genre but not uniformly. Instead recognition should be given, and allowances made, for the different stages of development of those under eighteen years. The next recurring theme was a request for distinctions to be drawn between factual representation and fiction at all appropriate junctures. And finally, song lyrics and music videos emerged on several occasions with the argument made that these are two areas in need of consideration and possible regulation.

Appendices

Appendix I

National legislation

Radio and Television Act, 1988

Section 9.1(d) *Radio and Television Act, 1988* states that each independent broadcaster must ensure that

Anything which may reasonably be regarded as offending against good taste or decency, or as being likely to promote, or incite to, crime or as tending to undermine the authority of the State, is not broadcast by him.

Broadcasting Act, 2001

Section 19 of the *Broadcasting Act, 2001* requires the Broadcasting Commission of Ireland (BCI) to formulate a code which will govern matters of taste and decency. In addition, it places conditions on how a particular code is to be developed. More specifically, this section states that:

19.1 The Commission shall, upon being directed by the Minister to do so and in accordance with the provisions of this section, prepare-

- (a) a code specifying standards to be complied with, and rules and practices to be observed, in respect of taste and decency of programme material, the subject of a broadcasting service or sound broadcasting service, and, in particular, in respect of the portrayal of violence and sexual conduct in such material.

19.5 Before preparing a code or making a rule under this section, the Commission shall make available for inspection by any person who makes a request of it in that behalf a draft of the code it proposes so to prepare or the rule it proposes so to make and shall have regard to any submissions made to it, within such period as it specifies for the purpose, by that person in relation to

the draft before it prepares the code or makes the rule concerned.

19.6 The Commission shall cause to be published in at least one newspaper circulating in the State notice of the fact that, pursuant to subsection (5), a draft referred to in that subsection is available for inspection, of the place at which or the means by which the draft can be inspected and of the period specified by it under that subsection within which submissions may be made to it in relation to the draft.

Legislation applying to public broadcaster
Broadcasting Authority Act, 1960

18.1 (a) The Authority is hereby prohibited from including in any of its broadcasts or in any matter referred to in paragraph (c) of subsection (1) of this section anything which may reasonably be regarded as being likely to promote, or incite to, crime or as tending to undermine the authority of the State.

Broadcasting Authority (Amendment) Act, 1976

18.3 (1A) The Authority is hereby prohibited from including in any of its broadcasts or in any matter referred to in paragraph (c) of subsection (1) of this section anything which may reasonably be regarded as being likely to promote, or incite to, crime or as tending to undermine the authority of the State.

Other relevant legislation
Bunreacht na hÉireann:

40.6.1. The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.

Defamation Act, 1961:

13.1 Every person who composes, prints or publishes any blasphemous or obscene libel shall, on conviction thereof on indictment, be liable to a fine not exceeding five hundred pounds or imprisonment for a term not exceeding two years or to both fine and imprisonment

or to penal servitude for a term not exceeding seven years.

Sections 14 and 15 of the *Defamation Act, 1961* extend this clause to affect broadcasting. Section 14 outlines the accepted definitions of broadcasting and consequently, 14.2 states ‘Any reference in this Part to words shall be construed as including a reference to visual images, gestures and other methods of signifying meaning.’ Furthermore, Section 15 states that ‘For the purposes of the law of libel and slander, the broadcasting of words by means of wireless telegraphy shall be treated as publication in permanent form.’

Incitement to Hatred Act, 1989:

- 3.1 If an item involving threatening, abusive or insulting visual images or sounds is broadcast, each of the persons mentioned in *subsection (2)* is guilty of an offence if he intends thereby to stir up hatred or, having regard to all the circumstances, hatred is likely to be stirred up thereby.
- 3.2 The persons referred to in *subsection (1)* are:
 - (a) the person providing the broadcasting service concerned,
 - (b) any person by whom the item concerned is produced or directed, and
 - (c) any person whose words or behaviour in the item concerned are threatening, abusive or insulting.

Equality Status Act, 2000

- 3.2. As between any two persons the discriminatory grounds (and the descriptions of those grounds for the purposes of this Act) are:
 - (a) that one is male and the other is female (the “gender ground”),
 - (b) that they are of different marital status (the “marital status ground”),
 - (c) that one has family status and the other does not or that one has a different family status from the other (the “family status ground”),
 - (d) that they are of different sexual orientations (the “sexual orientation ground”),
 - (e) that one has a different religious belief from the other, or that one has a religious belief and the other has not (the “religion ground”),
 - (f) subject to *subsection (3)*, that they are of different ages (the “age ground”),

- (g) that one is a person with a disability and the other either is not or is a person with a different disability (the “disability ground”),
- (h) that they are of different race, colour, nationality or ethnic or national origins (the “ground of race”),
- (i) that one is a member of the Traveller community and the other is not (the “Traveller community ground”).

Appendix II

European legislation

Television Without Frontiers directive (1989)¹

Article 22: Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include programmes which might seriously impair the physical, mental or moral development of minors, in particular those that involve pornography or gratuitous violence. This provision shall extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of the transmission will not normally hear or see such broadcasts...Member States shall also ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality.

Television Without Frontiers directive (1997)²

An amendment to Article 22 states that

...when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or identified by the presence of a visual symbol throughout the duration.

¹ European Parliament Council (1989), *Council Directive (89/552/EEC) of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in member States concerning the pursuit of television broadcasting activities.*

² European Parliament Council (1997), *Council Directive (97/36/EC) of 19 June 1997 amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.*

*European Communities (Television Broadcasting) regulations, (1999)*³

This states that

- 8.(1) Subject to paragraph (2) of this Regulation, a broadcaster shall not broadcast programmes that might seriously impair the physical, mental or moral development of minors, in particular those that involve pornography or gratuitous violence.
- (2) Programmes (not being those that involve pornography or gratuitous violence) which might impair the physical mental or moral development of minors may only be shown-
 - (a) where the broadcaster ensures, by selecting the time of the broadcast or by any technical means, that minors would not normally be expected to hear or see such broadcasts, and
 - (b) if broadcast in unencoded form, where the broadcaster ensures that such programmes are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.

³ *European Communities (Television Broadcasting) Regulations, 1999 (S.I. No. 313 of 1999).*

Submissions

Submissions

Ascough, Tom
Ashwitz
Amao, Olaide
Anon
Brennan, TJ
Burke, Nora
Campbell, Stephen
Cardy, Stephen
Celestina
Centre for Media Studies, NUI Maynooth (Dr. Chris Morash)
Church of Scientology Mission of Dublin
Cleary, Annette
Communications Law class, Masters in Public Law LLM, National University of
Ireland Galway (James Mulcahy)
Cosgrove, W.
Cooney, John and Mary
Coleman, Elaine
Cullen, Marilyn
Curran, Anthony and Briana
Dooley, Mary
Dullaghan, Brendan
Ebosele, Festus E.
Family and Media Association
Feeney, Peter (Head of Public Affairs Policy, RTÉ)
Finneran, Lynda
Flannery, Laura
Gibson, Rosemary J.
Gillespie, Terry
Gorman, Noel
Gray, Dorothea
Halloway, John
Halpenny, Dr. Orla
Hampson, Cynthia
Heany, Mr and Mrs Joy
Hennessey, John

Hodge, Fiona
Hogan, John
Kelliher, Mary
Kiely, Bernadette
Killeen, Carmel
Kinsella, Ray and Michael
Long, Enda
Macdonald, Paul
Martina
Moore, Mary
Moore, Maureen
Murphy, Debbie
Murphy, Frank
Murphy, George
Murphy, Pamela
Murtagh, James and Charlotte
McAuley, Stephen
McGahey, Ann
McGahey, Sharon
McGrath, Brian
National Disability Authority
O'Connor, Margaret
O'Regan, Brendan
O'Riordan, Joanna
O'Sullivan, Carmel
O'Toole, Breda
Phantom FM
Reidy, Fergal
Robinson, Lolo
Schizophrenia Ireland – Lucia Foundation SI
Shannon, Angela
Sheridan, Michael
Submission on behalf of the UTV owned radio stations (Cork's 96 and 103FM;
Limerick's Live 95FM; Dublin's Q102; and LMFM)
Symons, Siobhan
TV Three Television Network Limited
Walsh, Anne
White, Máire P.

