

Draft BCI Code of Programme Standards

Phase 3 Consultation

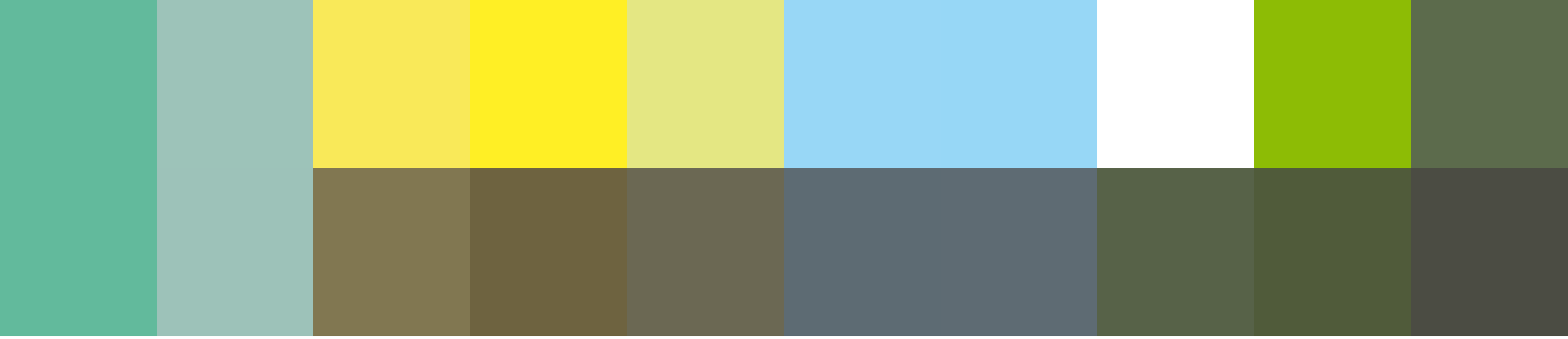


Broadcasting Commission of Ireland
Coimisiún Craolacháin na hÉireann



Consultation Document – Phase 3

Draft BCI Code of Programme Standards



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1.

How can you comment on the Draft BCI Code of Programme Standards?

1.1 Introduction

The publication of this document represents the third and final phase of the development of the BCI Code of Programme Standards ("the Code"). It fulfils our statutory obligations to publish a draft Code further to the provisions of sections 19(5) and 16(6) of the Broadcasting Act, 2001. We have developed this draft Code based on the submissions received from the public, broadcasters, advertisers, government bodies and other interested parties during Phases 1 and 2 of the consultation process. It has also been informed by Irish and European legislation, a workshop with broadcasters and by research carried out by the Commission, in particular, a review of international practices in this area and a national attitudinal survey undertaken by *Lansdowne Market Research*, on behalf of the BCI.

This document details the objectives which have guided the development of the Code and outlines the draft rules and principles pertaining to programme material with which broadcasters will have to comply.

1.2 How can you comment on the draft Code?

We would like you to read this document and to consider the proposals contained within it. We have provided some notes in Section 3 that explain the rationale for the proposals in the draft Code. We would like you to tell us which proposals you support and wish to endorse and if there are any with which you disagree. It is important that

you give reasons for your views in order that the Commission can consider and compare all the views received and understand the arguments being presented. Please try to be as specific as possible in your responses so that it is clear to which section of the draft Code your comments refer. The Code will be finalised by the Commission following consideration of the submissions received in response to this final phase of the consultation process.

The Commission encourages you to answer all of the questions raised. However, in going through the document you may decide that you only wish to respond to some of the questions posed and the document is designed to allow you to do this. **The Commission welcomes your views on any or all of the questions.**

You can comment on the draft Code by writing to us at:

**BCI Code of Programme Standards
The Broadcasting Commission of Ireland
2-5 Warrington Place
Dublin 2**

email: codes@bci.ie.

All responses should reach the Commission on or before **5pm, Tuesday 31st October 2006.**

1.3 Document Structure

This document has a number of sections:

Section 2 presents the *draft BCI Code of Programme Standards*.

Section 3 provides the rationale for the inclusion of the proposed objectives, principles and rules in the draft Code.

Section 4 explains the work of the BCI and the process that has been used to develop this draft Code. For those of you who have not been involved in Phase 1 or 2 of the consultation process, it explains how we have developed the *draft BCI Code of Programme Standards* and why we have adopted this approach.

1.4 Document Dissemination

The Commission wants to encourage participation by the public, broadcasters, advertisers and other interested parties in the consultation process and is undertaking a number of activities in order to promote it.

- The document is available from the Commission's offices and on its website - www.bci.ie.
- The document is being circulated to a wide range of individuals, groups and organisations.
- A notice promoting this consultation will be placed in the national press and will be broadcast on radio and television.
- Copies of the document are available in Irish, Braille and on audio-tape.

1.5 Freedom of Information

This is a public consultation process and following consideration of submissions by the Commission, all information submitted will be publicly available on request. However, there may be aspects of your submission which you may wish to submit in confidence. If this is the case, when making the submission please identify any information which you do not wish to be publicly disclosed and specify the reasons for its sensitivity.

Agreements between the Commission and respondents to the consultation regarding confidential information, are without prejudice to the Commission's obligations under the Freedom of Information Act, 1997 and the Freedom of Information (Amendment) Act, 2003. If the Commission receives a request for information submitted in confidence, you will be consulted before any decision is made.

2.

Draft BCI Code of Programme Standards

This section of the document presents the draft BCI Code of Programme Standards. The Code contains an introduction and three sections. These sections detail the objectives of the draft Code, the content principles and the content rules applying to programme material.

Introduction

Legislation

Section 19(1) of the Broadcasting Act, 2001, provides that:

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 the 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...

The draft BCI Code of Programme Standards has been developed in accordance with this provision following consultation with a wide range of individuals, industry, government and public bodies.

Jurisdiction

The draft BCI Code of Programme Standards will apply to broadcasters in the jurisdiction of the Republic of Ireland or those who make use of a frequency or satellite capacity or up-link situated

in the Republic of Ireland. In practical terms, the Code will apply to RTÉ radio and television services, TG4 and local, community and national radio and television services licensed under the *Radio and Television Act, 1988* and under the *Broadcasting Act, 2001*; for example, TV3, Today FM and Channel 6. It will not apply to other services commonly received in this country; for example, ITV or Sky services. Programme material on these services is regulated by the Television Without Frontiers Directive ("TWF Directive") and the OFCOM Broadcasting Code.

Assessment

Programme material will be assessed using this code in two ways.

Firstly, the Broadcasting Complaints Commission ("BCC"), which is the statutory body responsible for handling complaints about broadcasts, will consider such complaints by applying the principles and relevant rules of this Code. All broadcasters found in breach of this Code will be required to broadcast a notice outlining the decision of the BCC. In addition, upon receipt from the BCC of notification of a breach of the Code, the Broadcasting Commission of Ireland ("BCI") will issue a breach of contract to any broadcaster which it has licensed.

Secondly, all broadcasters licensed by the BCI are required to record programme output for a period of 90 days. Broadcasters are required to submit these recordings for specific times and dates chosen

by the BCI. Further to the *BCI Compliance Policy* (2006), in addition to monitoring these recordings for compliance with other statutory rules and codes, the recordings will be monitored for compliance with the *BCI Code of Programme Standards*. Stations found to have breached the Code will be notified of a breach of contract.

1. Objectives of the BCI Code of Programme Standards

- To promote responsible broadcasting where entertainment, education and access to information and a range of views is enhanced and offence and harm is reduced
- To acknowledge the diversity of tastes and interests which exists within viewing and listening audiences and to facilitate broadcasting that caters for this diversity
- To inform viewer and listener choice
- To provide guidance to broadcasters
- To inform viewers and listeners on the standards they can expect from broadcasting services.

2. Content Principles

2.1. General Community Standards

Programme material must not offend against commonly held standards of what is acceptable in contemporary Irish society.

2.2 Audience Information and Guidance

A broadcaster must take all reasonable measures to ensure that viewers and listeners to programme material on their channel/service are protected from undue offence and from harm.

Where appropriate, this must include the provision by the broadcaster of audience information and guidance using at least one of the following mechanisms:

- The use of prior warnings for programme material which has the potential to offend.
- The operation of a 'watershed', after which more adult-orientated programme material may be broadcast.
- The implementation of an evaluative or descriptive classification system whereby information is provided for some or all programme material.

Audience information and guidance must be provided in a manner which is clearly visible and/or audible.

Broadcasters shall promote regularly the audience information and guidance mechanisms used by their service(s).

2.3 Due Care

Broadcasters must have particular regard, when broadcasting programme material, to the ease with which a person can identify with characters, actions and personal circumstances. Particular care must be taken when scheduling the following programme material:

- sexual violence i.e. rape and sexual assault
- self-harm, including suicide
- reconstructions of factual events
- the use of archive footage

Due care should include the provision of audience information and guidance, and may also include the provision of relevant helpline details or other appropriate measures.

2.4 Protection for Children

The *BCI Code of Programme Standards* recognises that broadcasters share a responsibility with parents and guardians in protecting children i.e. those under 18 years of age, from exposure to inappropriate and harmful programme material.

To this end, broadcasters must have due regard to the protection of children when scheduling programme material.

Particular care must be taken in the following circumstances:

- i. When scheduling programme material that is broadcast either side of programmes which are likely to be watched or listened to by children.
- ii. When scheduling programme material during school-run times.
- iii. When scheduling programme material during school holidays when the viewing and listening patterns of children can change.

2.5 Assessment

Programme material will be assessed with reference to the principles and rules contained in the Code. The principles are indivisible, that is, all programme material must conform to all principles.

Programme material will be assessed in whole and in context. The following contextual factors will apply:

- Time of broadcast
- The type of programme
- The use of audience information and guidance
- The channel/service type
- Whether the inclusion of material is editorially justifiable
- The likely composition of the audience listening to or watching the programme

3. Content Rules

3.1 Violent Programme Material

3.1.1 As a general rule, broadcasters must have due regard to the appropriateness of, and/or justification for, the inclusion of violent content in programming material.

3.1.2 There are particular forms of violent programme material which require a greater level of editorial justification. The inclusion of the following violent programme material must be justifiable in the context of the development of the narrative and/or characters, or have strong editorial justification:

- Graphic violence
- Sexual violence i.e. rape and/or sexual assault
- Self-harm, including suicide
- Violence against children

3.1.3 In programme material featuring sexual violence, the detail of this violence must be kept to a minimum and such violence must not be condoned.

3.2 Sexual Conduct

3.2.1 As a general rule, broadcasters must have due regard to the appropriateness of, and/or justification for, the inclusion of portrayals of sexual conduct in programming.

3.2.2 Programme material which includes detailed scenes of a sexual nature must be justifiable in the context of the development of the narrative and/or characters, or have strong editorial justification.

3.2.3 The portrayal of sexual relationships between under-aged young people or between an adult and a child must not encourage such activities or portray them as being legal.

3.2.4 Nudity in programme material must only be broadcast when justified by context.

3.3 Coarse Language

3.3.1 As a general rule, broadcasters must have due regard to the appropriateness of, and/or justification for, the inclusion of coarse language in programming.

3.3.2 Broadcasters must be alert to, and guard against, the use of coarse language in live programmes.

3.3.3 The use of names considered sacred or holy by believers or their use as expletives in programming can cause offence. Broadcasters shall take a responsible approach to their inclusion during programming and their inclusion must be justifiable.

3.4 Portrayal of Persons and Groups in Society

3.4.1 The manner in which persons and groups in society are portrayed must be appropriate and/or justifiable.

3.4.2 Programme material shall not support or condone discrimination against any person or section of the community, in particular on the basis of age, gender, marital status, membership of the Traveller community, family status, sexual orientation, disability, race or religion.

3.4.3 Programme material must be careful not to stereotype or stigmatise people with a disability. Broadcasters must pay particular attention to the treatment of people with a disability in programmes, including the language used during programming. Colloquial terms of abuse must be avoided.

3.4.4 When portraying criminal activities, broadcasters must avoid an unwarranted correlation between the criminal act and the mental health of the perpetrator.

3.4.5 Programme material must avoid abusive treatment of any religious views or beliefs. This is not intended to prevent critical scrutiny of religion, but rather to prevent unnecessary offence during programming.

3.5 Factual Programming – News, Current Affairs and Documentaries

3.5.1 Factual programming shall not contain material that could reasonably be expected to prejudice respect for human dignity.

3.5.2 Factual programming shall not contain material that could reasonably be expected to cause distress or offence unless it is editorially justifiable and in the public interest.

3.5.3 Factual programming must only emphasise age, colour, gender, national or ethnic origin, disability, race, religion or sexual orientation when such references are justifiable in the context of the programme or in the public interest.

3.5.4 Factual programming shall ensure that the dead are treated with respect. The moment of death must not be shown nor should the dead be shown in close up, unless there is an exceptional public interest justification.

3.6 Children's Programming

3.6.1 Graphic violence, strong sexual content and strong coarse language must not feature during children's programming.

3.6.2 The use of illegal drugs, the abuse of drugs and/or solvents and the misuse of alcohol or tobacco must not be featured in children's programming unless there is strong editorial justification for its inclusion.

3.6.3 Trailers for adult programming containing material not reasonably regarded as suitable for children, must not be shown during children's programming.

3.6.4 Children's programming must not condone anti-social behaviour or encourage others to imitate such behaviour.

3.7 Portrayal of Drugs, Alcohol and Solvent Abuse

3.7.1 Programme material must not encourage the abuse of drugs and/or solvents or the use of illegal drugs.

3.7.2 Programme material must not encourage the over-consumption or abuse of alcohol.

3.7.3 Programme material must not present depictions, either fictional or factual, which detail techniques for the administration of illegal drugs except when there is strong editorial justification for its inclusion.

3.7.4 The use of illegal drugs, the abuse of drugs and/or solvents, smoking or the drinking of alcohol by children should not be presented in a favourable light.

3.8 Imitative Behaviour

Broadcasters must avoid the inclusion of programme content which could encourage people to imitate acts which are dangerous or prejudicial to the environment and/or the health and safety of themselves or others.

3.

Why we have included the objectives, principles and rules

This section provides the rationale for the inclusion of the proposed objectives, principles and rules in the draft Code.

Introduction

These notes are designed to explain the rationale for the inclusion of the objectives of the Code and the various principles and rules in the *draft BCI Code of Programme Standards*. These notes are provided in the context of this consultation only. They are not intended as a definitive guide to the interpretation of the draft Code nor are they intended as an exhaustive description of what is potentially covered by the draft Code. In so far as this is a draft Code, and, as such, is subject to further amendment, it should be noted that the Commission's views are evolving during this process. A full outline of the rationale for the proposals contained in the *draft BCI Code of Programme Standards* may be found in the *Statement of Outcomes Document Phase 2*. This document can be obtained on www.bci.ie and from the Commission's offices.

1. Objectives of the Draft BCI Code of Programme Standards

Five objectives are included in the draft Code. The objectives are intended to balance the need to inform viewer and listener choice with the need to facilitate responsible broadcasting. These objectives have been developed based on national and international research, the Commission's regulatory principles and, in particular, responses received to Phase 1 of the consultation process.

The objectives have been developed in order to cater for the diversity of tastes and interests among viewers and listeners and in recognition of the fact that issues of offence and harm are influenced by a range of factors and determined by context. The intent of the Code, as encapsulated by these objectives, is not to censor or sanitise programme material. Rather, the aim is to minimise offence and harm and to facilitate responsible broadcasting. These objectives were proposed in the Phase 1 consultation document and have been adopted by the Commission on foot of strong support for their inclusion in the draft Code by respondents in that phase of the consultation process.

Question 1

- What are your views on the five objectives proposed for inclusion in the Code?
- Please provide a rationale for your response.

2. Content Principles

The experience of the Commission in its development of codes over recent years has been that it is not practical to attempt to capture every possible scenario within the detail of a broadcasting code; for example, the *Children's Advertising Code* and the *draft BCI General Advertising Code* do not attempt to prescribe rules for every possible product or every possible type of advert. They do, however, frame principles against which individual adverts can be assessed.

Similarly, the *draft BCI Code of Programme Standards* follows this approach by developing principles intended to operate as the framework within which programme material can be assessed. This Code does not attempt to provide rules for every possible programme scenario nor does it attempt to define what is offensive. An understanding of this approach is key to an understanding of the *BCI Code of Programme Standards* and the manner in which it will operate in practice.

The adoption of a principle-based approach also attempts to accommodate changes in social mores. What is deemed offensive within a society can change over a period of years, it can vary among particular audiences and it can be largely determined by issues of context. The principle-based approach aims to provide flexibility that acknowledges these variables rather than attempting to offer a uniform solution or response to all issues that might arise.

Five principles have been included in the draft Code and the rationale for their inclusion in the Code is now briefly outlined.

General Community Standards

This principle is intended to outline to the public and broadcasters alike the basic requirement that programme material must adhere to, namely, it should not offend against commonly held standards in contemporary Irish society. An appeal to 'community standards' is intended to capture the general prevailing consensus as to what is deemed acceptable in Irish society at any particular time. These standards can pertain to specific language terms and issues such as the use of violent imagery and attitudes to sexual content.

While some respondents to the Phase 2 consultation document requested the BCI to define the meaning of 'commonly held standards', it is not proposed to do so, since by their very nature these standards change over time. A definition, while appropriate for today's audiences, might be inappropriate for audiences ten years from now. Furthermore, as the *Lansdowne National Attitudinal Survey* ("the national attitudinal survey") commissioned by the BCI highlighted, views on what constitutes commonly held contemporary standards varies depending on a number of factors including age. Therefore, a single catch-all definition would be difficult to develop.

Rather, when scheduling programme material, broadcasters are required to consider these standards with reference to the other principles of the Code, the specific rules pertaining to programme material (for example, violent programme material), and issues relating to context, including the time of the broadcast, the likely compositions of the audience, etc.

However, being mindful of the need to illuminate the diversity of tastes that exist in a society at any given time, the Commission will produce ongoing research in this area. This research will enable the Commission, the Broadcasting Complaints Commission ("BCC"), the public and broadcasters, to regularly update their understanding of what constitutes 'community standards' in contemporary Irish society at a given time. All such research will be made available publicly.

Audience Information and Guidance

This principle is intended to assist audiences to make informed choices about their own media consumption and that of children. It is also intended to assist broadcasters to ensure, as far as possible, that programming is scheduled at appropriate times and for an appropriate audience, in order to minimise offence and harm. It will require broadcasters to provide audience information and guidance about programming on their service(s). A principle requiring broadcasters to provide information and guidance was proposed in the Phase 2 consultation document and there was almost unanimous support amongst respondents, including broadcasters, for a mandatory requirement to provide such information.

While the Code will require the mandatory provision of information, the BCI has decided to leave the choice of mechanism to the discretion of broadcasters. It was the Commission's view that a discretionary approach is more appropriate in the context of the *Objectives of the Code*, since a one-size-fits-all approach would not accommodate the diversity of tastes, expectations and interests of Irish viewers and listeners. Furthermore, it was the Commission's view that a discretionary approach will recognise the differences between broadcasters in terms of items such as remit and resources.

Under this principle, broadcasters are required to utilise at least one of the following audience information and guidance mechanisms.

Prior Warnings

These are aired around broadcasts of material which has the potential to cause particular offence. In general, these take the form of a verbal message e.g. *'The following programme contains strong language and scenes of a sexual nature that may cause offence to some viewers.'*

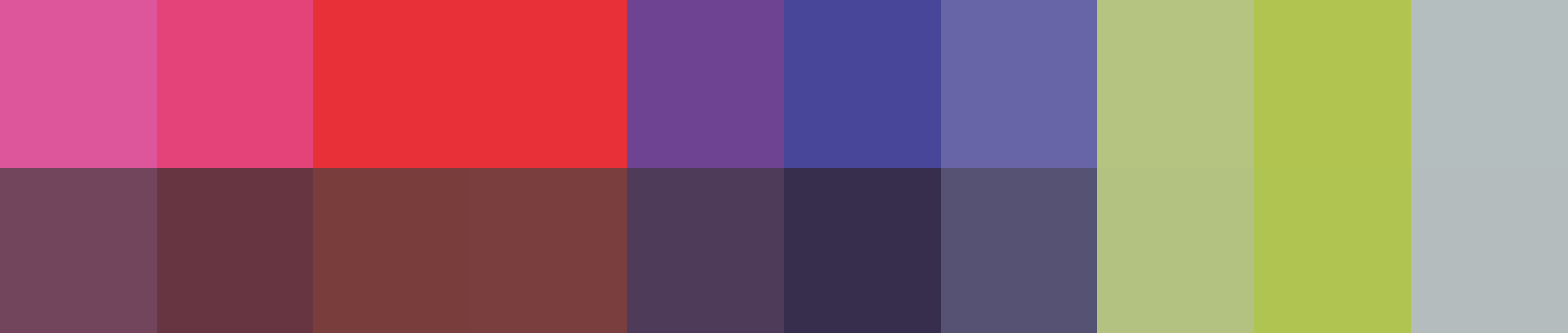
Watershed

This is a period in a schedule after which time more adult-orientated programming is broadcast on radio or television. The employment of a watershed is based on the premise that parents and guardians are responsible for what their children watch or listen to once the watershed commences. A watershed allows broadcasters to schedule accordingly and for parents and guardians to make informed choices depending on the time of day.

Classification

This entails classifying some or all programme material broadcast on a given television station. Classification is not suitable for radio programming. Two different types of classification systems may be utilised by television broadcasters. They are:

- i) *Evaluative Classification*- in general, this is information which indicates the recommended age group which should typically watch a particular programme e.g. MA (programming suitable for a Mature Audience) or 15+ (suitable for individuals aged 15 years and older).
- ii) *Descriptive Classification*- in general this entails the provision of information in terms which describe specific types of programme content rather than the age group for which a programme is suitable. Descriptive classification may refer to the presence of violent or sexual content, for example, but will not comment on the appropriate audience for the programme.



On occasion, broadcasters may have to consider whether the use of more than one of these mechanisms may be warranted in order to minimise offence and avoid harm. This will depend on the programme material in question, the audience profile and the time of day, among other contextual factors. In addition, this principle will require broadcasters to inform audiences on a regular basis about the information and audience guidance mechanism(s) provided by their services.

Due Care

The principle of *Due Care* is intended to recognise the potential for a person to identify with the programme material they are listening to or watching because of their own particular circumstances and their personal history. As a result, broadcasters are required to schedule programming with this in mind and to take steps to minimise offence and avoid harm to viewers and listeners. In addition, particular care must be taken by broadcasters before airing programme material containing sexual violence, self-harm (including suicide), reconstructions of factual events and the use of archive footage. While audience information and guidance may be necessary before the broadcasting of these types of programme material, the provision of additional information may also be warranted; for example, information about help lines or prior contact with people included in archive footage or involved in events reconstructed for radio or television.

Protection for Children

This principle, as well as the specific content rules pertaining to children's programmes, is intended to offer additional protection to children with regard to programme material broadcast on Irish television and radio. Under this principle, broadcasters are required to schedule responsibly during school-run times, during holiday periods and in and around

programming likely to be watched or listened to by children. This principle also recognises the role shared by parents, guardians and broadcasters when it comes to responsible broadcasting to, and consumption by, children of radio and television programme material.

Assessment

The fifth and final principle relates to the assessment of programme material and it is intended to provide the framework for the assessment of compliance with the Code. In practice, this principle will be used by the BCI to monitor compliance as part of its routine assessment of programme broadcasts. It will also be used by the BCC to assess complaints received.

Programme material will be assessed in whole and in context with reference to the principles and rules. A complaint about violent programme material during a children's programme, for example, will be assessed with reference to all five principles, rules pertaining to violent programme material and rules pertaining to children's programming. This is an important point to emphasise since a number of respondents to the Phase 2 consultation document considered the specific rules and principles proposed in isolation from the Code as a whole.

Programme material will also be assessed with reference to the six contextual factors outlined under this principle. These contextual factors are included in recognition of the various factors which can influence the viewer or listener's perception of programme material and hence the degree of offence or harm that can occur. A viewer may judge a piece of violent programme material differently, if his/her expectations have been tempered by information provided in advance by the broadcaster, as to the likely content of the programme.

The contextual factors are intended to recognise such variables. The contextual factors were proposed in the Phase 1 consultation document and they were adopted by the Commission on foot of strong support from respondents to this document.

Question 2

- What are your views in relation to each of the five content principles proposed for inclusion in the Code?
- Please provide a rationale for your response.

3. Content Rules

The draft Code contains specific rules in relation to eight types of programme material. These are: violent programme material; sexual conduct; coarse language; the portrayal of persons and groups; factual programming; children's programming; the portrayal of drugs, alcohol and solvent abuse, and; imitative behaviour. These rules are intended to set the standards required of programme material of this nature.

While the legislation providing for the development of the *BCI Code of Programme Standards* specifies that the Code should address the issues of violence and sexual conduct in programme material, six additional programme areas have been included in the Code. These areas were identified with reference to the research conducted by the Commission into equivalent codes in other jurisdictions and their inclusion was endorsed by respondents to Phase 1 of the consultation process. Concerns about these types of programme material were also evident in the results of the national attitudinal survey.

While there were requests from Phase 2 respondents to include more detailed content rules, some of which would introduce more prohibitions on programme material, these requests were considered contrary to the *Objectives of the Code*. Therefore, the rules in this section of the Code do not attempt to provide rules for every possible individual programming scenario. Rather, they include general rules under each of the eight programme material areas identified. Where necessary, a limited number of specific rules are included under each heading in order to provide additional protection to the viewer and listener in relation to areas where particular offence can occur; for example rules pertaining to the portrayal of people with a disability.

The Code does not include rules in relation to issues such as fairness and balance in news and current affairs reporting, privacy and incitement to crime as these are provided for under other legislation. Complaints may be made to the BCC regarding this type of programme material.

The intent of the rules under these eight headings is now briefly outlined. As with the content principles, any assessment of programme material coming under each heading will be conducted in whole and in context with reference to the principles and rules of the Code.

Violent Programme Material

The Code permits the inclusion of violent programme material once its inclusion is handled responsibly.

The three rules under this section of the draft Code are intended to outline standards with regard to the portrayal of violent programme material on radio and television. Rule 1 requires the inclusion

and treatment of programme material of this nature to be justifiable and/or appropriate. This rule applies to all types of violent programme material.

Rules 2 and 3 are intended to provide additional protection to the viewer and listener when it comes to portrayals of particular types of violence. These are graphic violence, sexual violence, self-harm (including suicide) and violence against children. Broadcasters are required to take particular care when including this type of material. These types of programme material were highlighted during the national attitudinal survey and by respondents to the Phase 1 and 2 consultation documents as those requiring additional attention in the Code.

The rules under this section remain the same as those proposed in the Phase 2 consultation document.

Question 3

- What are your views in relation to the rules proposed for Violent Programme Material?
- Please provide a rationale for your response.

Sexual Conduct

The four rules under this heading permit the inclusion of portrayals of sexual conduct in a programme once they are handled responsibly by broadcasters. The intent of these rules is to provide protection to viewers and listeners and to provide guidance to broadcasters in this area.

Rule 1 is a general rule requiring the inclusion of such material to be justifiable and/or appropriate. Rules 2, 3 and 4 are intended to provide additional protection with regard to the inclusion of programme material containing nudity, portrayals

of detailed sexual conduct, portrayals of relationships between under-aged couples and relationships between an adult and a child. Again, these additional protections reflect concerns expressed in the national attitudinal survey and by respondents to the consultation documents.

With the exception of one change, the rules proposed in this section remain the same as those proposed in the Phase 2 consultation document. Rule 3, which relates to relationships between under-aged people and between an adult and a child, has been amended so as to more clearly emphasise the requirement that programme material of this nature does not encourage or legitimise these types of relationships. Requests to prohibit the inclusion of this type of programme material were deemed contrary to the *Objectives of the Code* as it may, on occasion, be appropriate to include portrayals or discussions of these types of relationships.

Question 4

- What are your views in relation to the rules proposed for Sexual Conduct?
- Please provide a rationale for your response.

Coarse Language

The Code acknowledges that the inclusion of coarse language in a programme may be legitimate in certain circumstances.

The approach adopted to both violent programme material and sexual conduct is reflected in the three rules pertaining to coarse language. A general rule, Rule 1, requires the responsible inclusion of coarse language in programming and its inclusion must be justifiable and/or appropriate. The other two rules

demand extra caution on the part of broadcasters so as to avoid, in so far as is possible, coarse language during live programming and the inappropriate use of names considered holy or sacred by believers. Both types of programme material were of particular concern to respondents to the national attitudinal survey and the BCI's consultation documents.

These rules remain unchanged from those proposed in the Phase 2 consultation document. A request to prohibit the use of sacred or holy names as expletives was considered contrary to the *Objectives of the Code* as their inclusion may, on occasion, be a legitimate part of a programme. It should be noted that the intent of the rule pertaining to the use of sacred or holy names is to highlight the particular type of offence than can be caused by the use of these names. The rule requires broadcasters to take a responsible approach to their use in programming.

Question 5

- What are your views in relation to the rules proposed for Coarse Language?
- Please provide a rationale for your response.

Portrayal of Persons and Groups in Society

The manner in which particular groups, religions or nationalities are portrayed and the language used in programme material to describe these groups was of concern to respondents to the national attitudinal survey. These rules are intended to outline the standards required of broadcasters when it comes to portrayals of persons and groups in programme material in order to reflect these concerns.

In addition to the general requirement set down in Rule 1 to ensure appropriate and/or justifiable portrayals of persons in society, Rule 2 requires broadcasters to avoid discriminatory programme material. This second rule draws on the relevant equality legislation and prohibits, in particular, programme material which supports or condones discrimination against persons and groups in society based on age, gender, marital or family status, membership of the Traveller community, sexual orientation, disability, race or religion.

Rules 3 and 4 in this section of the Code also establish a requirement to avoid material that could promote or endorse inaccurate, demeaning or discriminatory stereotypes of people with a disability as programme material of this nature can cause particular offence.

The fifth and final rule requires broadcasters to avoid the abusive treatment of religious beliefs or views. However, this rule should not be seen as preventing the legitimate critical scrutiny of religion in drama, factual programming, comedy or other types of programming. When handled appropriately, the critical scrutiny of social, civic and religious organisations in Irish society is an important part of the role of both radio and television.

A number of changes to the rules proposed in the Phase 2 consultation document have been introduced. The requirement to avoid discriminatory programme material has been widened to include all members of society in addition to a particular requirement in relation to the nine grounds set out in legislation. The rule in relation to portrayals of people with a disability has been re-worded in order to include all types of disability.

Requests to expand to all members of society the rules prohibiting stereotyping of people with a disability and unwarranted correlations between criminal activity and mental health were not adopted by the Commission. These rules are intended to provide special protection to particular members of Irish society and the Commission is satisfied that the general rules requiring appropriate, justifiable and non-discriminatory portrayals of people in society provide sufficient protection for members of Irish society in general.

Question 6

- What are your views in relation to the rules proposed for the Portrayal of Persons and Groups in Society?
- Please provide a rationale for your response.

Factual Programming – News, Current Affairs and Documentaries

The rules in this section acknowledge the fact that programming of this nature reflects real events and impacts on people in a unique manner as a result. They are intended to set out basic standards for this type of programming.

However, the rules are not intended to prevent legitimate comment in a factual programme but rather require programme makers to treat their subjects with dignity. In addition, no individual characteristic, such as age, gender, and ethnicity, should be highlighted during a factual programme unless it is relevant to the programme. Finally, unduly distressing or offensive material, including depictions of the dead, should be avoided unless it is justifiable in the public interest.

The rules proposed in the Phase 2 consultation document are included in the draft Code. In addition, one new rule has been added. This relates to the requirement that factual programming must not prejudice respect for human dignity. A request for a rule of this nature was evident in a number of responses to the Phase 2 consultation document. These responses cited inappropriate reporting of people in Ireland and in the developing world and noted that the Code did not contain any requirement for broadcasters to treat subjects in factual programming with respect and dignity.

Question 7

- What are your views in relation to the rules proposed for Factual Programming?
- Please provide a rationale for your response.

Children's Programming

While the *draft BCI Code of Programme Standards* is concerned with all programming material, Phase 1 of the consultation process and the research commissioned by the BCI emphasised the desire for the Code to provide additional protection for children. The rules in this section are intended to provide this additional protection.

For the purpose of this Code, a child is defined as any individual under the age of 18 years. This definition was originally formulated as part of development of the *BCI Children's Advertising Code*. It is also included in the *draft BCI General Advertising Code* and it is included in this Code in order to ensure consistency in regulation. A children's programme is defined as any programme commonly referred to as such and/or have an audience of which over 50% are under 18 years of age.

It is important to note that the rules under the other seven headings will also apply, where relevant, to children's programming. While Rule 1 under children's programming, for example, relates to the prohibition on the inclusion of graphic violence, strong sexual content and strong coarse language, the general rules under violence, sexual conduct and coarse language will also apply to children's programmes. In addition, broadcasters must also be mindful of the principles of *Audience Information and Guidance, Protection for Children and Due Care*.

The rules in this section remain unchanged to those proposed in the Phase 2 consultation document. A request to prohibit the inclusion of portrayals of drugs, alcohol and solvent abuse in children's programming was considered contrary to the *Objectives of the Code*. The Commission was satisfied that the rule requiring strong editorial justification for the inclusion of programme material of this nature will provide sufficient protection. In addition, it is satisfied that the principle of *Protection for Children* and the general rules pertaining to the portrayals of drugs, alcohol and solvent abuse will also provide added protection.

Question 8

- What are your views in relation to the rules proposed for Children's Programming?
- Please provide a rationale for your response.

Portrayal of Drugs, Alcohol and Solvent Abuse

The abuse of drugs, alcohol and solvents is a key concern of society in light of the real effect such abuse can have on individuals and society as a whole. The rules under this heading are intended to ensure that these issues are handled responsibly by broadcasters.

Programme material of this nature must not encourage abusive or illegal use of drugs, alcohol and solvent abuse and particular care must be taken not to portray the use and abuse of these substances by adults and children in a positive light. Particular caution is also required before the inclusion in programme material of depictions which detail techniques for the administration of illegal drugs. They may only be included when supported by strong editorial justification.

Question 9

- What are your views in relation to the rules proposed for the portrayal of drugs, alcohol and solvent abuse?
- Please provide a rationale for your response.

Imitative Behaviour

This final rule has been included on the basis that television and radio can play a part in influencing behaviour. While recognising the complexity of the relationship between exposure to radio and television and imitative behaviour, the aim of this rule is to establish a basic standard in this area. This rule has been amended to that proposed in the Phase 2 consultation document in order to clarify its applicability to both radio and television and a requirement to protect both individuals and others from harm.

Question 10

- What are your views in relation to the rules proposed for imitative behaviour?
- Please provide a rationale for your response.

4.

Background to the development of the Draft BCI Code of Programme Standards

This section introduces the work of the Broadcasting Commission of Ireland and its statutory requirement to develop the *BCI Code of Programme Standards*. It outlines activities undertaken during Phase 1 and 2 of the consultation and activities planned for the third and final phase.

4.1 The Broadcasting Commission of Ireland

The Broadcasting Commission of Ireland (“BCI” or “the Commission”) is a statutory body of ten members. The Commission is responsible for a number of key areas of activity with regard to television and radio services in Ireland further to the provisions of the Radio and Television Act 1988, the Broadcasting Act 2001 and the Broadcasting (Funding) Act 2003. They include:

Licensing

The Commission licenses independent broadcasting services with a view to providing listener choice and diversity. This includes the licensing of a national television programme service (TV3), a national radio service (Today FM) and a total of 54 regional, local, community and institutional radio services. The Commission is also responsible for the licensing of additional services on digital terrestrial, cable, MMD and satellite.

Monitoring

The Commission monitors all of the above services to ensure that licence holders comply with their statutory obligations as well as their terms of contract. Monitoring includes the assessment of programme performance, ownership and control structures, financial and trading performance,

human resource management practices and transmission and studio facilities.

Codes and Rules

The Commission is responsible for the development of codes and rules in relation to programming and advertising standards. When introduced, these codes will apply to all broadcasters, both public and private.

Development

The Commission provides support for training and development initiatives, in an effort to promote a culture of excellence in the independent broadcasting sector.

Research

The Commission undertakes and/or commissions research to assist the development of broadcast policy in Ireland, in the context of technological change, changes in EU legislation, new programming formats and international trends and experiences.

Information

Through its information function, the Commission publishes and disseminates information to those working in the broadcasting sector as well as to the general public.

Sound and Vision-The Broadcasting Funding Scheme

The Commission is responsible for the development and administration of funding scheme(s) to support new television and radio programmes in the area of Irish culture, heritage and experience and adult literacy.

4.2 Approach to the development of the BCI Code of Programme Standards.

Section 19(1) of the Broadcasting Act, 2001 requires the BCI to prepare a code specifying standards to be complied with, and rules and practices to be observed, in respect of the taste and decency of programme material, and, in particular, in respect of the portrayal of violence and sexual conduct in such material.

The Commission considered its approach to the development of the Code within the context of its regulatory principles and research conducted into similar codes in other jurisdictions worldwide. On foot of this, the Commission decided to develop the *BCI Code of Programme Standards* over three phases, to be informed by the following principles:

- The development of the Code will not be limited to issues of violence or sexual conduct
- The development of the Code will acknowledge that there are influencing factors that determine how material is received by the viewer or listener
- The development of the Code will acknowledge the importance of context in assessing programme material
- The development of the Code will focus on determining the principles and framework against which programming material can be assessed rather than attempting to prescribe precise rules for every situation.

A range of activities were undertaken in Phases 1 and 2 and these are now outlined. Activities planned for Phase 3 are also detailed.

Phase 1

Phase 1 of the consultation was undertaken between August and October 2005. Three principal activities were undertaken and these are briefly described.

Public Consultation

A Phase 1 Consultation Document was produced and disseminated. It sought views on three key areas:

- Objectives of the Code – what should be the Code’s objectives?
- Scope of the Code – what issues should be addressed by the Code?
- Context – what factors should be considered when assessing programme material?

There were 71 submissions received in response to the consultation and these have been summarised in the report entitled *‘Review of Submissions Received, BCI Code of Programme Standards: Phase 1’*.¹ This document is available on the Commission’s website, www.bci.ie. In general, there was broad support for the issues put forward for consideration and the majority of respondents endorsed the proposed objectives, scope and contextual factors.

Nationwide Attitudinal Survey

The nationwide attitudinal survey into what offends people on radio and television was undertaken by Lansdowne Market Research, with a representative sample of 1,000 respondents aged 15+, at 63 locations throughout the country.

The survey was completed using face-to-face interviews in respondents' homes, with the most sensitive issues (e.g. swear words and derogatory terms) administered as a self-completion questionnaire. A copy of the results of this survey is available on the Commission's website, www.bci.ie.

Workshop with Broadcasters

A consultation workshop with broadcasters was held on October 27th, 2005 with over 50 broadcasters in attendance. The purpose of the day was to capture the experience of broadcasters in relation to regulating these issues within their station/service.

Decisions reached by the Commission on foot of Phase 1 are detailed in the document '*Statement of Outcomes – Code of Programme Standards, Phase 1*'. This document is also available on the Commission's website, www.bci.ie or on request from the Commission's offices.

Phase 2

Phase 2 of the development of the *BCI Code of Programme Standards* was carried out from 25th March to 16th May, 2006. This phase involved one principal activity.

Public Consultation

A Phase 2 consultation document was produced and disseminated. This sought views on three key areas:

- Content Principles under four headings
- Content Rules under eight headings
- Mechanisms for providing audience information and guidance.

One hundred and forty five submissions were received in response to the consultation and these have been summarised in the report entitled '*Review of Submissions Received, BCI Code of*

*Programme Standards: Phase 2*². This document is available on the Commission's website, www.bci.ie. The majority of responses came from the general public and organisations representing public interests. Four broadcasters and two industry bodies responded to the consultation.

Decisions reached by the Commission on foot of Phase are detailed in the document '*Statement of Outcomes – Code of Programme Standards, Phase 2*'. This document is also available on the Commission's website www.bci.ie or on request from the Commission's offices.

Phase 3

Phase 3 of the development of the *BCI Code of Programme Standards* will be carried out from September 5th until October 31st 2006. This phase will involve two principal activities.

Public Consultation

A Phase 3 consultation document has been produced and is being disseminated. Further to Sections 19(5) and 19(6) of the Broadcasting Act, 2001, this consultation will include the publication of *draft BCI Code of Programme Standards*. Views will be sought on the proposals detailed in the draft Code, in particular:

- Objectives of the Code
- Content Principles
- Content Rules

Workshop with Broadcasters

A consultation workshop with broadcasters will be held. This workshop will focus on issues pertaining to the practical implementation of the *draft BCI Code of Programme Standards*.

² Dr. RBM. Quinn, (2006). *Review of Submissions Received, BCI Code of Programme Standards: Phase 1*. BCI, July, 2006.

4.3 Legislation

Irish Context

Within an Irish context, there are already in place some restrictions regarding taste and decency and there is also some experience in regulating these matters. Section 9(1)(d) of the Radio and Television Act, 1988 requires that broadcasters licensed under the Act must ensure that anything which might reasonably be regarded as offending against good taste and decency, is not broadcast.

In addition, there are four provisions in particular within the Broadcasting Act, 2001 relating to the *BCI Code of Programme Standards*. These are:

Section 19 (1) which states:

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 the 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...

As with the other codes and rules under section 19, the Commission is required under sections 19 (5) and (6) to make a draft of the Code available for comment before the Code is finalised.

Section 19(5) states:

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.

Section 19(6) states:

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.

Section 24.2(b) provides the basis by which complaints regarding taste and decency, among others, can be processed.

European Context

At European level, the Television Without Frontiers Directive ("TWF Directive") functions as an overarching piece of legislation which outlines certain objectives to be achieved by Member States of the EU. This means that Irish regulations must incorporate the principles laid down in that document. Article 22 of the TWF Directive requires States to take measures to ensure that television broadcasts under their jurisdiction do not include programmes that might seriously impair the physical, mental or moral development of children. The TWF Directive also requires that broadcasters schedule responsibly and where necessary provide an acoustic or visual warning to viewers.

5.

Summary of Questions Asked

Objectives of the Code

1. What are your views on the five objectives proposed for inclusion in the Code?

Content Principles

2. What are your views in relation to each of the five content principles proposed for inclusion in the Code?

Content Rules

Violent Programme Material

3. What are your views in relation to the rules proposed for Violent Programme Material?

Sexual Conduct

4. What are your views in relation to the rules proposed for Sexual Conduct?

Coarse Language

5. What are your views in relation to the rules proposed for Coarse Language?

Portrayal of Persons and Groups in Society

6. What are your views in relation to the rules proposed for the Portrayal of Persons and Groups in Society?

Factual Programming – News, Current Affairs and Documentaries

7. What are your views in relation to the rules proposed for Factual Programming – News, Current Affairs and Documentaries?

Children's Programming

8. What are your views in relation to the rules proposed for Children's Programming?

Portrayal of Drugs, Alcohol and Solvent Abuse

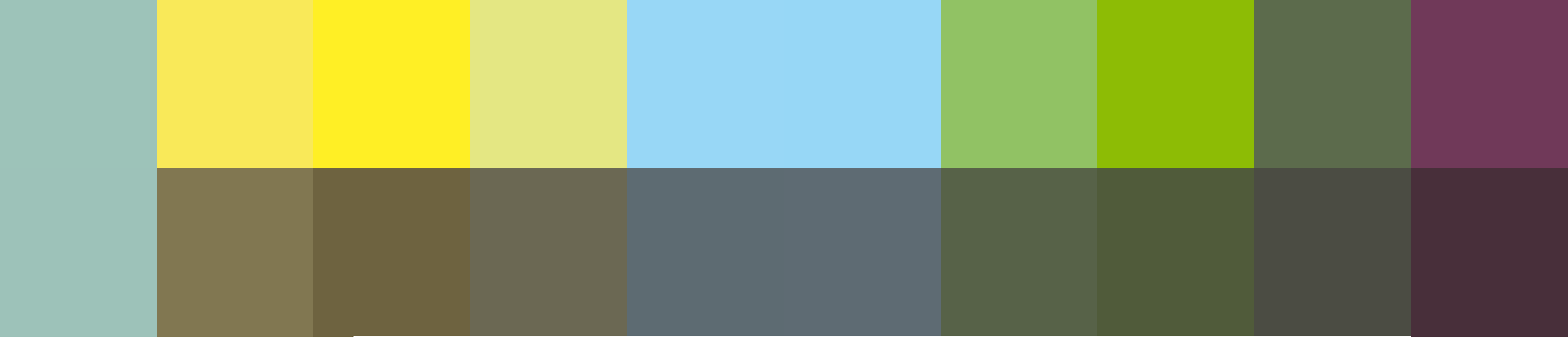
9. What are your views in relation to the rules proposed for Portrayal of Drugs, Alcohol and Solvent Abuse?

Imitative Behaviour

10. What are your views in relation to the rules proposed for Imitative Behaviour?

Please provide a rationale for all of your responses.

The Commission wishes to thank you for your time and participation. Your views have played an integral role in the development of the *BCI Code of Programme Standards*. The Commission will consider the responses received to Phase 3 of the consultation process prior to the finalisation and publication of the Code.





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