

BCI Code of Programme Standards

Phase 1



Broadcasting Commission of Ireland
Coimisiún Craolacháin na hÉireann



Consultation Document – Phase 1

BCI Code of Programme Standards



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Foreword

Each of us brings our own perceptions, ideas and experience to bear when we are determining whether we consider that programming material is tasteful or decent, harmful or offensive. Our views as to what these words mean in the context of programming material are largely subjective and can change over time. We may consider the same piece of programme material differently depending on the time it is broadcast or whether we expect to see that type of material on a particular type of programme. When we use these terms, it is on the understanding that there does not exist a clearly defined concept of what is tasteful or what is decent, but rather that it is something dynamic. Language, for example, can acquire new meaning and interpretations. The degree of offence we experience in response to the portrayal of specific acts of violence, sexual content or words can change over time and between people. Contemporary standards of what is tasteful, decent, harmful or offensive are constantly evolving.

The challenge for the Broadcasting Commission of Ireland is to develop a code that will address these concepts of taste, decency, harm and offence in the context of radio and television broadcasting. The code will be provisionally called the Code of Programme Standards and it will aim to acknowledge the diversity of taste and interests that exist within these audiences.

There is an important balance to be struck between regulation that offers protection but which also affords freedom of expression. Freedom of

expression is identified as an important human right and broadcasting is a key means by which that right is exercised in society. Regulation has to facilitate that right while providing appropriate standards for responsible broadcasting. Broadcasting has always challenged audience expectations in creative and surprising ways. There is a need to facilitate broadcasters in continuing to push creative boundaries, satisfying a diverse range of audience tastes, views and opinions, while avoiding needless offence and harm.

This code will aim, therefore, not to censor, sanitise or deconstruct, but to promote responsible broadcasting where entertainment, education and access to information is enhanced and offence and harm reduced. The code will afford broadcasters the opportunity to offer a range of content and choice without mitigating against its potential to inform the viewer and listener and provide protection for children and for those viewers/listeners who do not wish to be exposed to particular programming material.

This document marks the beginning of a public process to develop the Code of Programme Standards. The Code will be developed based on the views expressed, the experience of these issues to date and the community standards that exist in Ireland today. The Commission hopes that this will be a dynamic process and that the resulting code will achieve a balance that facilitates creative, challenging and responsible broadcasting.

1.

Introduction

This section introduces the work of the Broadcasting Commission of Ireland. It also explains the purpose of this consultation and how the Commission will develop the new Code of Programme Standards.

1.1 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. These responsibilities include licensing, monitoring, codes and rules, development, research, information and the administration of *Sound and Vision, the Broadcasting Funding Scheme*.

Key functions of BCI

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 systems.

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. The Commission also supports programming initiatives such as the New Adventures in Broadcasting Scheme.

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.

Broadcasting Funding Scheme

Under the Broadcasting (Funding) Act 2003, the BCI has been given responsibility for the development of a scheme, 'Sound and Vision', for the granting of funds to support:

- (i) Broadcasting of new television and radio programmes on Irish culture, heritage, experience and adult literacy;
- (ii) Broadcasting of such programmes in the Irish Language, and;
- (iii) Development of archiving of programmes produced in the state.

The Scheme is funded by 5% of net television licence fee revenue.

1.2 Process to develop a Code of Programme Standards

The Commission is required, under the Broadcasting Act 2001, to develop a code of standards in respect of the taste and decency of programming material. The Commission has decided to provisionally call this the BCI Code of Programme Standards. The Code will address issues of taste and decency and harm and offence with respect to programming material on radio and television.

The Commission will develop the code over three phases. This allows for the work to be broken into manageable sections as well as allowing the results of each phase to inform the subsequent work undertaken. It maximises participation in the debate by members of the public and stakeholder groups, by providing a number of opportunities for involvement over each phase. This also gives time

for the complexity of the issues to come to the fore and be discussed. It allows time for research to be undertaken, so that the development of the code is informed and evidence-based.

Phasing affords the Commission the flexibility to use responses to consultation to inform further research and vice versa. It is also a more transparent process, as the Commission will publicise the results of each phase and provide a rationale for the decisions taken, explaining how the results of a particular phase have influenced the next.

Phase 1

This public consultation document is part of Phase 1 of the development of the code. The other activities within Phase 1 include:

- A nationwide attitudinal survey
The attitudinal survey will be very important in capturing views on what is offensive to viewers and listeners in Ireland. It will also ask for views on what influences our perception of this type of programming content.
- A workshop with broadcasters
The workshop with broadcasters will attempt to capture their experience of dealing with issues of taste and decency over the years.

The information gathered from the public consultation, the attitudinal survey and the workshop will all feed into the Commission's decision making and will influence the content of Phase 2.

Phase 2

In Phase 2, the Commission will hold a public consultation on the actual rules to be contained within the code. In the event that Phase 1 has highlighted areas which require further research, this will be carried out in Phase 2.

Phase 3

In Phase 3, the Commission will publish the draft code and seek views and comments.

While this is an indicative description of the process to be used, it may change as a result of the outcomes of any particular phase. In addition to the activities listed above, it is anticipated that a number of other activities will be developed to engender public debate on the issues.

1.3 Purpose of this document

This consultation document is the first step in the furtherance of our statutory remit to develop such a code. The code will contain principles and rules that will apply to programming content on radio and television services licensed by the Commission, as well as RTÉ radio and television services, and TG4. The document asks for your views as to what areas should be included in such a code, that is, what should be the 'scope' of the code. It also asks what factors should be taken into consideration when assessing issues of programme standards, that is, what are the issues we take into consideration when we are deciding whether something is tasteful, decent, offensive or harmful. This document does not focus on the 'rules' to be contained in the code but rather focuses on identifying the broad issues that should be taken into consideration. The rules will be considered in Phase 2.

1.4 Document structure

This document has a number of sections. These are as follows:

- **Legislative Framework**
This section outlines the legislation which forms the basis for the development of the Code on Programme Standards.

- **Application of Regulatory Principles to the development of the Code**

In this section of the document, the Commission outlines its own regulatory principles and how it proposes to apply them to the development of a Code of Programme Standards.

- **Scope of the Code**

This section asks for your views as to the range of issues that should be included in the code.

- **Context**

This section asks for your views on the factors that should be taken into consideration when assessing whether programming material is offensive. What are the factors that should make up the 'context' in which a piece of programme material is considered.

- **Summary of issues arising and questions posed**

This section summarises the key issues arising and the questions that have been posed.

Please read the document and provide us with your comments. It is important that you provide us with a reason for your views, as this will help us in understanding your point of view and in considering the submissions we receive. Please be as specific as possible in your responses.

1.5 Document dissemination

This document is being circulated to a range of individuals, groups and organisations. The Commission wants to encourage participation in the consultation process. A notice of this consultation will be placed in the national press. The Commission has also made available an on-line response form on its website for those who wish to email their responses. Copies of the document are available in Irish, Braille and on audio-tape.

1.6 Freedom of Information

This is a public consultation process and following consideration of submissions by the Board of the BCI, 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 BCI's obligations under the Freedom of Information Act, 1997 and the Freedom of Information (Amendment) Act 2003. If the BCI receives a request for information submitted in confidence, you will be consulted before any decision is made.

Responses should be forwarded to the Commission by post, on-line or by e-mail to codes@bci.ie on or before **October 28th, 2005**.

2.

Legislative Background

This section outlines the legislation which forms the basis for the development of the Code of Programme Standards.

2.1 Current Context

Broadcasters have been dealing with issues of taste and decency since broadcasting began. The absence of a code does not mean that these issues have not been considered before or are new. Irish broadcasters have had to deal with these issues on a daily basis over the years and the Commission aims to build on this experience in developing the code.

The Code of Programme Standards will be a new code. However, there are some restrictions already in place regarding taste and decency and there is experience in regulating these matters.

At European level, the Television Without Frontiers Directive (TWF) functions as an overarching piece of legislation which outlines certain objectives to be achieved by Member States. This means that Irish regulations must incorporate the principles laid down in that document. Article 22 of the TWF 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 minors. States are also obliged to ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality. The TWF also requires that broadcasters schedule responsibly and where necessary provide an acoustic or visual warning to viewers.

2.1.1 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, 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.

In the absence of a detailed statutory code, broadcasters have developed their own guidelines, which offer direction to presenters and producers as to how best to avoid giving offence. Broadcasters have shown responsibility in developing such guidelines and the Commission is keen to build on this experience in the development of the Code. RTÉ applies its 'Programme Makers' Guidelines', which were devised in 2002. The approach takes four principal areas into consideration as appropriate, namely, (i) context; (ii) audience expectation; (iii) scheduling; and (iv) presentation warning. TG4 also employs these guidelines. TV3 has developed its own set of guidelines. These cover the areas of (i) bad language; (ii) sex; (iii) violence; and (iv) general considerations.

The guidelines operated by each of the broadcasters, while useful, do not have any statutory basis. Neither, for that matter, does the informal watershed of 9pm, operated by television broadcasters. With regard to radio, most stations also operate their own internal guidelines.

2.2 Current role of Commission

At present, the Commission considers, in exceptional circumstances, material before it is broadcast. The Commission has a set of procedures and practices in place for the consideration of such material. These remain in effect today.

Complaints submitted to the Commission relating to programming material are forwarded, where appropriate, to the Broadcasting Complaints Commission (BCC) for consideration and adjudication. The BCC primarily considers complaints submitted to it directly by members of the public.

2.3 Broadcasting Act 2001

There are four provisions within the Broadcasting Act 2001 relating to the Code of Programme Standards. These are:

Section 19(a) 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 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 rules 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.

The legislation specifies that the code should address the issues of violence and sexual conduct in programming material. It does not restrict the Commission from addressing other matters of taste and decency in the code, such as coarse language. This type of issue is addressed in equivalent codes in other jurisdictions. The Commission will seek your views on what other issues might be included in the code, later in this document.

3.

Application Of Regulatory Principles To The Development Of The Code

In this section of the document the Commission outlines its own regulatory principles and how it proposes to apply them to the development of the Code of Programme Standards.

3.1 Guiding Regulatory Principles

The Commission's regulatory principles are those that it considers important in formulating and implementing its regulatory policy. They are the principles that inform the manner in which the Commission carries out its activities and duties. They endorse the Council of Europe's premise 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. They acknowledge the importance of the Commission being able to respond adequately to unforeseen and often complex questions that will emerge in the developing broadcasting landscape. They also reflect the principles of better regulation presented by the Government in its White Paper 'Regulating Better' as well as the vision, values and goals of the Commission as developed in its Strategic Plan 2004-2008.

The five regulatory principles are:

1. **Diversity**
2. **Flexible and consistent approach**
3. **Adequate regulation based on current conditions**
4. **Openness and dialogue**
5. **Clear decision-making**

The manner in which they have informed the Commission's approach to the development of the Code of Programme Standards is outlined below.

3.1.1 Diversity

The principle that a diversity of programming should be available for the public implies that the code should avoid being censorial or prescriptive in focus, as this could result in a reduction in the diversity of programming available to the listener/viewer. Typically, codes in other jurisdictions have sought, not to censor or sanitise but to promote responsible broadcasting where entertainment and education is enhanced and offence and harm reduced. The code will aim to acknowledge the diversity of taste and interests that exist within the viewing and listening audiences. In keeping with this principle, it should afford broadcasters the opportunity to offer a range of content and choice. This does not, however mitigate against its potential to inform the viewer or listener and provide protection for children and for those viewers or listeners who do not wish to be exposed to particular programming material.

3.1.2 Flexible and consistent approach

This principle promotes regulation that encompasses flexibility and adaptability to the needs of change. This is particularly relevant in this instance, as social mores and what is deemed offensive within a society can change over a short period of years, can vary among particular audiences and can be largely determined by issues of context. As discussed later in this document, context issues such as the time of broadcast, the audience, the channel type and the

type of programme, all play a significant role in the determination of what is offensive. The code will need to retain a flexibility that acknowledges these variables rather than attempting to offer a uniform solution or response to all issues as they arise.

The subjectivity inherent in determinations of what is tasteful, or indeed decent, will necessitate a code that can operate consistently and in a manner that cannot be deemed to be inconsistent, arbitrary or biased. The code will apply to all programming and, as such, will affect the viewing choices of a broad demographic range, each with its own potential tastes and subjective notions of what constitutes decency.

3.1.3 Adequate regulation based on current conditions

A principle of adequate regulation based on current conditions further endorses the view that regulation needs to be capable of facilitating broadcasting as well as setting standards and applying them. Thus, while adhering to its statutory obligations, the role of the Commission is the formulation of basic principles that are fair and reasonable, rather than prescriptive rules.

A code dealing with issues of taste and decency is relevant to all consumers of broadcast media but does not mean curtailing freedom of expression. Producing such regulations is not censorship. It does not aim to ban certain types of language or images that are deemed to be a legitimate part of dramatic or literary treatments nor is it intended to exclude references from legitimate reportage, debate or documentaries. It is a means to foster responsible broadcasting, broadcasting that educates, provokes discussion and entertains while offence and harm are kept to a minimum.

The code will be based on current conditions. The Commission will conduct attitudinal research to ascertain current community standards in relation to the type of issues that arise under the headings of taste and decency. This will ensure that the code is not based on assumptions that certain views exist, but rather reflects actual contemporary views and standards. In this way, the code will avoid an approach that over-regulates but rather is adequate and evidence-based.

3.1.4 Openness and dialogue

The process used to develop the code will be open, transparent and will facilitate dialogue. The consultative process will be designed to maximise participation and awareness of the debate across a wide range of broadcasting and public interests.

3.1.5 Clear decision-making, transparency and accountability

This principle demands that both the process used to develop the code and the final code will be clear, comprehensive and capable of implementation. It will be grounded in an Irish cultural experience, practice and research, while according with EU law. The Commission will elaborate on decisions taken in each phase of development of the Code, through the publication of Statement of Outcomes documents. These documents will outline the process and rationale for any decisions taken, thus contributing to decision-making that is transparent and accountable.

3.2 Objectives of the Code

In the context of its regulatory principles and the statutory obligation to produce such a code, the Commission has identified the following key objectives for the 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 reduced
- To acknowledge the diversity of taste and interests that exists within viewing and listening audiences and to facilitate broadcasting that caters for this diversity
- To inform viewer and listener choice
- To provide guidelines to broadcasters
- To inform viewers and listeners on the standards they can expect from broadcasting services.

QUESTIONS

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.

4.

Scope of The Code

This section provides some information regarding the type of issues that are addressed in similar codes in other jurisdictions. It then asks for your views as to what areas/issues should be included in the Commission's Code of Programme Standards.

4.1 Background

The Broadcasting Act 2001 cites two specific areas to be addressed within the code, namely, violence and sexual content. The legislation does not, however, limit the scope of the code to these two areas.

This section of the consultation is concerned with gathering information with regard to what other areas should be included in the Code of Programme Standards.

The Commission undertook a review of national and international practices in preparation for the development of the code. The research, entitled, *Taste and Decency - a review of national and international practices*¹, examines the types of issues that arise under the heading of taste and decency. It examines the idea of context and it gives an overview of how these issues have been dealt with in Ireland and in other jurisdictions. An analysis of equivalent codes in other jurisdictions reveals that issues such as coarse language, religious sensibilities, children's programming, the portrayal of particular groups in society and the portrayal of alcohol and drugs have also been included in codes to varying degrees. This section of the document briefly outlines the range and types of issues that arise in codes of this type and asks for your views as

to what issues should be included in an Irish Code of Programme Standards.

4.2 Range of issues

4.2.1 Violence, sexual content and coarse language

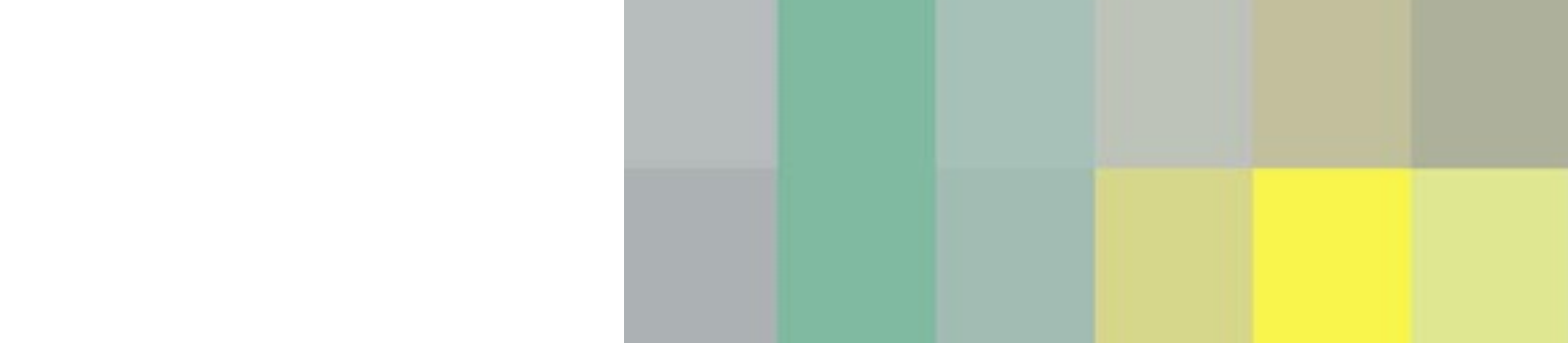
Violence, sexual content and coarse language are the three principal areas included in the codes in other jurisdictions. The research points to the huge variety of words and activities that can be included under these headings. The situation is made more complex by the ability of context to further influence the meaning attached to these words or deeds, in particular, whether they are offensive.

While coarse language, violence and sexual content are used as general terms to describe the type of material included, the research reveals that within each of these topics there is a further categorisation. Attitudes can vary according to the specific type of violent act, the specific word used, the specific sexual act or the nature of the act, for example, consensual sex versus rape.

4.2.2 Portrayal of persons and groups in society

The manner in which particular groups or religions or nationalities are portrayed and the language used to describe these groups, arises as a category in many codes. Rules exist in other jurisdictions that focus on the avoidance of programming material that could promote or endorse inaccurate, demeaning or discriminatory stereotypes, for example, the stereotyping of people with disabilities.

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



Such rules are not intended to prevent the broadcast of material that is factual or the expression of genuinely held opinion in a news or current affairs programme or in the legitimate context of a humorous, satirical or dramatic work. They are included to ensure that programming meets generally accepted community standards of civility and respect for the diversity of a given country.

4.2.3 News, current affairs and documentaries

News and factual programming is highlighted in the programme standards rules in other jurisdictions. These rules typically focus on the avoidance of news material that is presented in a manner that will mislead or panic or cause unnecessary distress to viewers and listeners. Other rules concern the manner in which suicide is reported or the avoidance of any material that might encourage imitative behaviour.

4.2.4 Children's programming

While the Code of Programme Standards is concerned with all programming material, some codes have included specific sections in relation to children's programming, while others have included rules regarding the watershed. The watershed is often discussed in terms of its role in protecting children. However, it is also used by adult viewers to avoid certain type of programming material. It is worth noting that in Ireland the watershed operates as an informal arrangement and is not contained in any codes, rules or law. Rules under this heading also deal with imitative behaviour, that is, the avoidance of material that could encourage children to copy behaviours that are dangerous and/or anti-social.

4.2.5 Portrayal of drugs, alcohol and solvent abuse

Rules and principles under this heading are concerned with the manner in which these activities are portrayed in programming. These rules do not mean that such activities cannot be portrayed in programming.

At this point in the development of the code the Commission is interested in the scope of the content of the Irish Code of Programme Standards. At the end of Phase 1, the Commission will, based on research and the submissions received, identify the areas to be included in the code. These areas will become the headings under which principles and rules will be established in Phase 2. It is important to remember that, at this stage, the Commission is interested in the broad headings as opposed to the exact rules or principles. So, for example, if you believe the code should include rules in relation to the portrayal of sexual violence, then at this point, we would like you to provide us with that information and your rationale for its inclusion in the code. The Commission is not at this time, seeking your views on what rules should apply. This work will be undertaken in Phase 2.

This is a brief summary of the issues that arise. If you would like a better understanding of the issues outlined above, as well as a full description of the issues covered in other codes, this is available in the research report which can be located on the BCI website at www.bci.ie.

QUESTIONS

3. The Commission 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 or violence that you believe should receive particular attention in the Code? Please provide a rationale for your response.

4. 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

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

Please provide a rationale for your views.

5.

Context

This section discusses the factors that influence whether programming material is regarded as offensive. It asks for your views as to what should be taken into consideration when assessing whether programming material is offensive or harmful. The Commission refers to this as the 'context' in which the programme material is broadcast. This section seeks your views on identifying what should constitute context.

5.1 Introduction

Our opinions with regard to whether a programme is tasteful, decent, offensive or harmful are influenced by factors other than the programme itself. They can change according to the context in which the programme is broadcast. A viewer may regard nudity as offensive. However, if such nudity occurred in the context of a health programme the viewer may not find it as offensive. If such a programme was broadcast late in the evening, the viewer may find it less offensive than if it were broadcast at 4pm when children are likely to be watching television.

The Code of Programme Standards will not attempt to have a rule for every possible type of programme or every possible type of material that could be broadcast. Such an approach would be impossible; programming is creative and it would be impossible to write a code that pre-empted such creativity and anticipated every type of scene that might occur in a programme. Instead, the Commission will formulate a range of principles and broad rules that may be applied to every situation. These principles and rules

will have to take context into account, precisely because viewers and listeners take context into account.

5.2 What is context?

The Commission's research into what people regard as offensive or harmful on television and radio revealed that this is influenced by a number of factors. Some of these factors are related to the viewer, for example, whether the viewer is male or female. The viewer's age can also influence whether s/he regards something as offensive or harmful. Other factors are related to the programme, for example, what type of programme it is, what time it is being broadcast at and whether the viewer expected to see that type of material on the programme.

This means that it is not easy to categorically state whether something is offensive or harmful in and of itself. It depends on who is watching and the context in which the material is broadcast. The code cannot deal with factors related to the viewer. The Commission cannot make one code for female viewers and another for male viewers. It cannot make a code for viewers of specific age groups. The code can, however, acknowledge the factors related to the programme.

The Commission has identified, through research, a number of factors that could influence how the viewer or listener perceives a programme. These are proposed here as the factors that would be regarded as the context in which a programme is

broadcast. The elements are not presented in any particular order. In addition, it is not suggested that only one element should be used to assess programme material. The Commission is seeking your views as to whether you believe these elements should be included in the code, as contextual issues that need to be taken into account when assessing whether material is offensive or harmful. The elements discussed here are:

- Time of broadcast
- Type of programme
- Channel type
- Prior information/warning
- Editorial justification
- Likely size and composition of audience

The Commission is also seeking your views as to whether there are additional elements that should be included.

5.2.1 Time of broadcast

In terms of harm and offence, time of broadcast can influence how a viewer or listener views programme material. It may be that the viewer or listener believes that a programme is offensive or harmful because it has been broadcast too early or perhaps at a time when children are likely to be watching or listening e.g. on a radio breakfast programme during the school run. The same material may be acceptable if it were broadcast at 11am when most children are in school. Time of broadcast may not be so important if the viewer has chosen to pay for the channel or if the channel is encrypted³ and only available to adult members of the household. These viewers may wish to have adult material available during daytime hours. Encryption can preclude accidental viewing of the material.

Scheduling

The time of broadcast can also relate to the type of programme scheduled before and after the programme in question. For example, younger viewers

may be exposed to a programme that ordinarily attracts an adult audience, because they are tuning in to watch the programme scheduled to appear after the adult programme. This could see, for example, younger audience members, inadvertently being exposed to inappropriate material.

QUESTIONS

6. 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?
7. Are there any differences between radio and television in this regard?
8. Does time of broadcast become a less important consideration for channels that are subscription only or encrypted?

Please provide a rationale for your responses.

5.2.2 Type of programme

There are many types of programme – soap opera, current affairs, comedy, feature film, children's programmes and news. Do viewers and listeners have different expectations as to what type of material is appropriate to feature in a particular type of programme? Does this mean that the type of programme influences what is regarded as offensive and harmful?

For example, viewers and listeners may expect that a 'cop series' will contain some violent scenes or coarse language, while viewers may not expect that an early evening soap opera would contain

³ Encryption means that the viewer, having paid to access that channel, does so using his or her password or other security device.

the same level of violence or coarse language. A documentary or news programme may contain scenes that are regarded as distressing, these same scenes may not be as distressing if shown in a feature film, that the viewer knows is a work of fiction. Or would they?

If programme material defies our expectations or is out of the norm of what usually features in that type of programme, this may lead to that programme material being seen as offensive or harmful. Can the same type of programme material e.g. violence, coarse language, sexual content, be offensive if it appears on one type of programme, yet acceptable if it appears on a different type of programme?

QUESTION

9. 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.

5.2.3 Channel/Service type

Viewers and listeners have a variety of channels and services from which to choose programme material. A viewer or listener may prefer a specific television channel or radio service because of the type of programming shown or music played. Channel/service type is proposed as a factor that influences whether programming material is regarded as offensive or harmful. This relates to two aspects – the viewers *expectations* of the channel and the viewer's *access* to the channel.

Expectations

Over time a viewer or listener builds a set of expectations with regard to the type of programming broadcast on particular channels.

These expectations relate to the type of programmes but also to the pace of presentation, the style of graphics and the orientation of the station, that is, whether it's targeting a young or older audience. The type of programming broadcast will be reflective of all of these factors and viewers and listeners will expect that certain channels are more likely to include programming with coarse language or scenes with sexual content or violence. The viewer or listener may come to expect other channels to have programming that does not routinely have content of this type. These expectations enable viewers and listeners to regulate their viewing or listening and make choices with regard to the type of programming to which they are exposed. Viewers or listeners that do not regard certain programme material as tasteful or decent may not listen to or view such channels/services, while other viewers or listeners may appreciate such programming and choose that channel/service. The diversity of programming being a reflection of the diversity of taste that exists within the population.

The channel/service type can be a factor in whether a viewer or listener finds programme material offensive or harmful. This can happen if a viewer or listener does not routinely view the channel/service, but happens upon it, not realising that this type of content is typical of the channel/service and appreciated by its target audience. Or it may be that a channel/service broadcasts material that is not in keeping with the usual type of programming or the viewer's expectations of that channel/service, for example, it may broadcast a programme with coarse language and violent scenes.

Access

Some channels are free to air and readily accessible to all viewers and listeners. Others are only available on payment of a subscription and the viewer makes a choice to have that channel

in his or her home. This determines the likely composition of the audience, in that subscription channels are only available to those viewers who have chosen them, while free-to-air channels are available to all viewers. This can influence whether programme material is regarded as offensive or harmful. If a viewer has chosen to access a particular subscription channel and has done so in the knowledge of the type of programme material broadcast on that channel, it may be that he or she will not be offended by material broadcast on that channel. The same material broadcast on a free-to-air channel may be regarded as offensive by viewers who did not choose to access that type of programming. The material may be regarded as harmful because there is wider access to the channel by all viewers; including young viewers and listeners. In other words, there is an increased likelihood that viewers or listeners could be unintentionally exposed to the material.

QUESTIONS

10. 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.

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

5.2.4 Prior information/warning

Harm or offence may be caused when programme material is contrary to the viewer or listener's expectations. The viewer or listener may not expect a programme to contain, for example, violence or sexual content. It has been suggested that the degree to which the viewer or listener is informed that the subsequent programme material would

contain this type of material, can influence whether a programme is regarded as harmful or offensive. This information can assist the viewer or listener in regulating their own viewing, that is, in making a choice not to watch or listen to the programme, or in the case of parents, it gives them information to help them decide if the programme is suitable for their children. The provision of such information by the broadcaster may involve a warning with regard to the type of material e.g. '*This programme contains strong language and scenes of a sexual nature*', or it may involve the broadcaster suggesting what age group should typically watch this type of programme e.g. *General Audience*. Would the provision of such information by the broadcaster mitigate in any way to the potential for the programme material to be regarded as offensive or harmful, in that the broadcaster has acted responsibly in providing information to the viewer/listener? If the broadcaster has provided this type of information in advance, should this be taken into consideration when assessing whether a broadcaster is in breach of the code?

QUESTION

12. 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.

5.2.5 Editorial justification

The viewer or listener may believe that a particular scene in a programme is in bad taste, indecent, or is harmful or offensive. The broadcaster may believe that such a scene was editorially justified, that is, required in the context of the programme. For example, it may be that s/he considers that the

inclusion of graphic scenes is in the public interest and required to fully communicate or explain a news story. The use of coarse language or the portrayal of violence in a drama series may be regarded as necessary for the credibility of the storyline or characterisation or to contribute to the realism of the situation. The use of a stereotype may be regarded as justified in the context of its use in a comedy scene. An interviewee's views may be regarded by many, as offensive. However, the broadcaster may regard their inclusion to be necessary as they reflect genuinely held opinions in society.

QUESTION

13. In assessing whether 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.

5.2.6 Likely composition and size of audience

This factor is linked in many ways to channel/service type and programme type. It asks whether the likely composition, (for example the age groups watching) and the size of the audience should be considered in assessing whether material is indecent, harmful or offensive. A particular channel or programme may, usually, attract a particular type of audience, i.e. 18-35 year olds, who will be aware of and accustomed to, the type of programme usually shown on that channel. A viewer not usually acquainted with this material may find the material offensive. Should the likely composition and expectations of the more usual audience be taken into account when assessing the material? Another example may be where a programme usually attracts an older audience, but for reasons connected with the pre-publicised guest appearance of a pop star or sports icon, the audience may attract a large

number of younger viewers. In assessing whether material on the programme is offensive or harmful, should consideration be given as to whether the broadcaster had regard for the likely composition and size of the audience in this context? As with many of the factors outlined in this section, it is unlikely that this factor would be considered in isolation, in assessing material.

QUESTION

14. Should the likely composition and size of the audience be considered in assessing whether material is offensive?

Please provide a rationale for your views.

OTHER FACTORS

15. Are there any other factors that you believe should be included, that 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.

6.

Summary of Questions Posed

Objectives of the Code on Programme Standards

The Commission has identified a number of key objectives for the Code of Programme Standards.

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.

Scope of the Code

This section provided information regarding the type of issues that are addressed in similar codes in other jurisdictions. It asked for your views as to what areas/issues should be included in the Commission's Code of Programme Standards.

3. The Commission 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 or violence that you believe should receive particular attention in the Code? Please provide a rationale for your response.
4. Which, if any, of the following areas do you consider appropriate to include in the Commission's Code of Programme Standards? Please provide a rationale for your response explaining why you consider this as an important heading to include:

- (vii) Coarse language
- (viii) Children's programming
- (ix) Portrayal of persons and groups in society
- (x) Portrayal of drugs, alcohol and solvent abuse
- (xi) News and current affairs
- (xii) Imitative behaviour

5. Are there other areas/issues that you believe should be included in the code?

Please provide a rationale for your response.

Context

This section discussed a number of factors that influence whether programming material is regarded as offensive. The Commission refers to this as the 'context' in which the programme material is broadcast. It asked for your views as to what factors should be taken into consideration when assessing whether programming material is offensive or harmful.

Time of broadcast

6. Does the time at which a programme is broadcast influence whether the material on that programme could be seen as offensive or harmful and, if so, 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?
7. Are there any differences between radio and television in this regard?

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

Please provide a rationale for your responses.

Type of programme

9. 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.

Channel type

10. 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.

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

Prior information/warning

12. 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.

Editorial justification

13. In assessing whether 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.

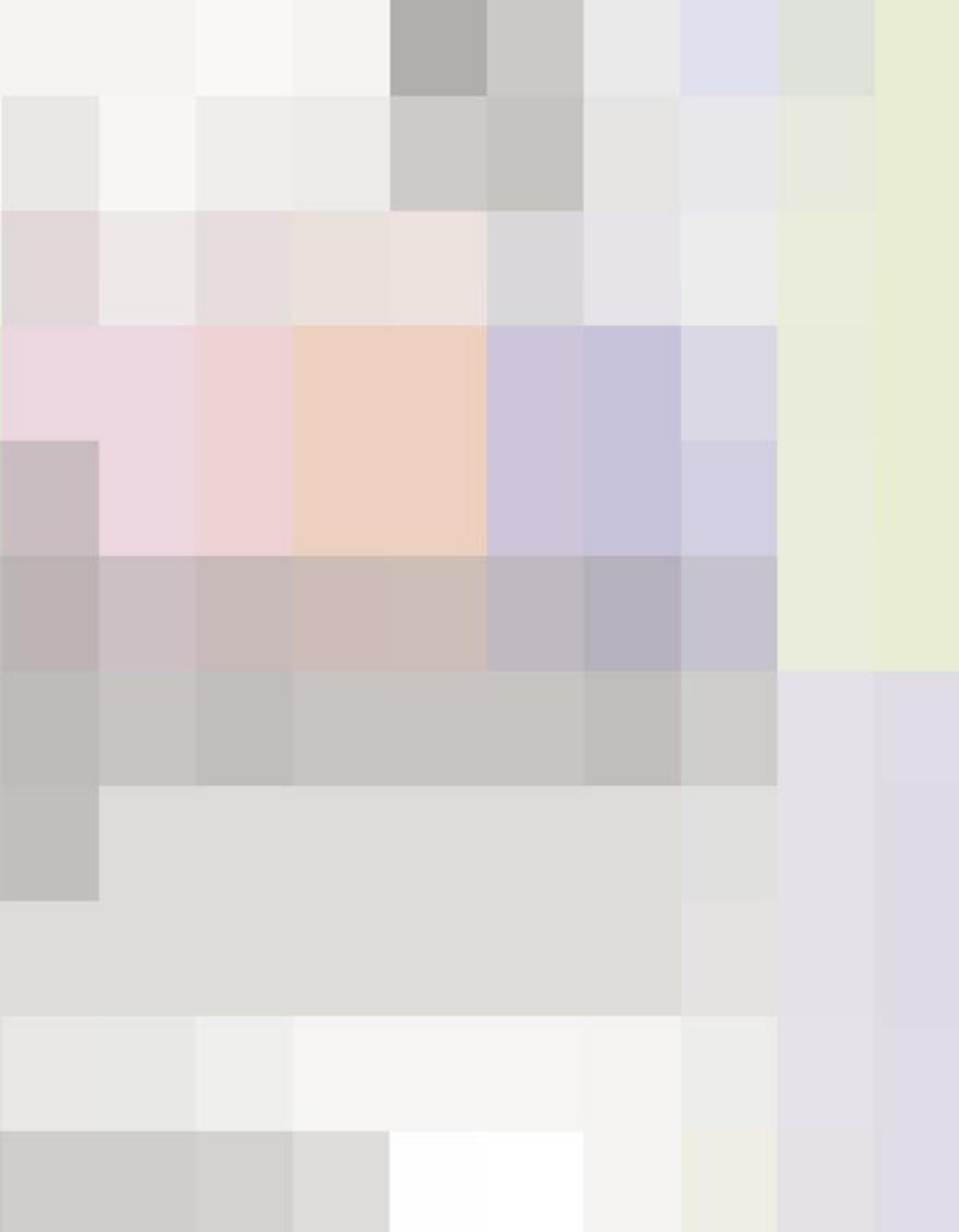
Likely composition and size of audience

14. Should the likely composition and size of the audience be considered in assessing whether material is offensive?

Please provide a rationale for your views.

15. Are there other factors that you believe should be included, that 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.





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