

Channel Four Television Corporation

Channel 4 response to the Ofcom consultation on cross-promotion rules

February 24, 2006

INTRODUCTION

The media landscape is changing rapidly. The days when traditional terrestrial broadcasters like Channel 4 can deliver public service programming to a mass audience through one or two transmissions on a single linear television channel will disappear. Multichannel television, broadband Internet and mobile provide almost limitless choice for consumers, in turn providing almost limitless competition for traditional broadcasters.

Channel 4's vision is to maintain, ideally strengthen, its unique public service role in this emerging environment. Already, we have:

- established a digital channel portfolio (currently E4, More4 and Film Four) that builds on our core Channel 4 service;
- invested in innovative Internet and mobile content and services to connect with our audiences away from the television screen;
- launched a series of commercially-focused initiatives ensure we are able to thrive as the industry's economic model evolves;
- crucially, we have significantly increased our investment in original content to reinforce our reputation for creative and diverse public service television.

In the future, we plan to launch video-on-demand, digital audio and additional mobile content services. Promotion is crucial to the success of each of these activities — a defining feature of the digital age is that marketing is as much of a core competence in the media industry as content and service creativity.

Channel 4's services, particularly Channel 4 itself, represent a powerful asset for marketing our portfolio of activities in support of our vision. We want to be able to use the promotional airtime available to us to maximise their impact.

Given the importance of cross-promotion, we welcome this consultation, and support Ofcom's deregulatory agenda in this area.

There nevertheless remain some key outstanding issues for Channel 4, centred on how Ofcom's proposed rules for cross-promotion will operate within the rapidly changing media marketplace. The pace of change over the next few years will likely exceed that of the last few years, so it is crucial that the cross-promotion rules in place provide Channel 4 with enough flexibility to address this change.

We would welcome the opportunity to discuss the issues raised in the consultation document, and in this response, with Ofcom before new rules are agreed and implemented.

RESPONSE TO QUESTIONS

Question 1: Do you think that Ofcom should deregulate and remove the 30% shareholding rule?

Channel 4 agrees with Ofcom that while the 30% shareholding rule theoretically strikes a reasonable balance between ensuring there is both sufficient incentive and freedom for the broadcaster to enter into a cross-promotion relationship, there are shortcomings with this approach.

In particular, as Ofcom acknowledges in its consultation document, the 30% figure is somewhat arbitrary and in practice there could be a host of circumstances where legitimate incentive to cross-promote is present where the shareholding interest is less than 30%. Indeed, there are situations where cross-promotion can legitimately be undertaken where there is no formal shareholding structure established around the channel or service (see our response to Questions 2 and 3, below). We therefore endorse Ofcom's proposal to deregulate and remove the 30% shareholding rule.

Question 2: Do you agree that Ofcom should provide guidance around a 30% shareholding threshold?

Channel 4 agrees with Ofcom that guidance around cross-promotion relationships will help provide broadcasters with additional certainty and transparency in considering which activities it can properly devote cross-promotional resources to.

However, we believe it is unnecessarily restrictive to base the guidance solely around 30% shareholding arrangements. There are other types of relationship — for example, a licensing or other contractual agreement that includes a revenue share component — that create sufficient incentive for the broadcaster to cross-promote but that involve no formal shareholding in the venture.

Channel 4 proposal

We believe that Ofcom should consider models of collaboration other than shareholding where legitimate cross-promotion of value to viewers can be undertaken, and incorporate them into the guidance with illustrative examples to ease interpretation. We would welcome the opportunity to discuss with Ofcom a wider range of arrangements outside of shareholding where cross-promotion relationships can legitimately be established.

Question 3: Do you agree that where there are other relationships, such as joint programming or licensing rights, these circumstances should be considered on a case by case basis?

As indicated in our responses to Questions 1 and 2 above, Channel 4 believes there is scope for the guidance around cross-promotion relationships to incorporate reference to non-shareholding models of collaboration with partners in order to provide broadcasters with a clear regulatory context for a wider range of potential activities. Given it is unlikely such guidance could cover every possible approach to cross-promotion relationships, Channel 4 agrees that there should be a mechanism that enables Ofcom to consider such relationships on a case by case basis.

Question 4: Do you consider that the commercial terrestrial broadcasters — ITV plc, Channel 4 and Five — should be required to maintain neutrality in terms of the promotion of their services across all digital retail TV services and platforms?

Platform neutrality is becoming an increasingly complex concept as digital roll-out and adoption progresses and new media technologies enter the market. Channel 4 believes this subject needs further consideration and clarification from Ofcom in three key areas:

- The range of broadcasters to which platform neutrality rules should apply;
- The definitions of “digital platform” and digital retail television service” for the purposes of platform neutrality regulation;
- The generic name for the DTT platform.

a. The range of broadcasters to which platform neutrality rules should apply

The Current Rules on platform neutrality were devised and implemented in a very different broadcasting environment to today. At the end of 2001, just before the Rules came into effect, digital television household penetration stood at less than 40% of households, and ITV had a direct, substantial economic and strategic interest in the DTT platform in the form of ITV Digital.

These two facts jointly created the need for regulation providing for platform neutrality in cross-promotion:

- The relatively early stage of digital roll-out meant consumer awareness and understanding of the various digital options was less developed than now;
- ITV had the ability to use its privileged position in the analogue world to direct consumers to its own digital platform in a way that could inhibit genuine platform competition.

In four short years, the environment has changed radically. ITV Digital closed a matter of months after the publication of the Current Rules. Meanwhile, digital television penetration has

grown to over two-thirds of households, driven by sustained growth of the Sky subscriber base, the virtual completion of the conversion of cable homes to digital and the spectacular success of Freeview, the consortium set up by the BBC, Sky and National Grid Wireless (Channel 4 and ITV have since joined) to provide a simple, inexpensive route to digital television. Meanwhile, government-backed Digital UK is embarking on a major consumer awareness and education campaign for digital switchover, including setting out the key platform options analogue households can choose from.

As a result of these developments there are now two clearly defined markets for digital television in the UK:

- A market based on converting current analogue households to digital (one-third of homes);
- A market based on competing for penetration and revenues among households that have already adopted digital television (two-thirds of homes).

i. Analogue conversion market

Ofcom makes a key assertion in relation to this market: commercial terrestrial broadcasters, Channel 4 among them, would, unless otherwise constrained, decide to promote Freeview at the expense of the other platforms. While the observation that terrestrial broadcasters generally achieve better audience share in Freeview homes compared to digital satellite or cable is correct, we would dispute this assertion because commercial realities dictate that it is in Channel 4's interests to promote its services' availability to viewers on *all* platforms in order to maximise service or programme viewing, and in turn both public service and advertising impact.

Nevertheless, we agree with the need to ensure that full information on service availability across platforms is available to consumers considering the switch to digital — a role that Channel 4 will play a full part in, supporting Digital UK's own communications agenda.

ii. Digital competition market

As digital penetration has grown, so has the importance of the market for ongoing digital platform choice among homes that have already converted from analogue. This market includes churn between digital platforms and the choice of platform for additional television sets in the home.

Here, the presence of terrestrial broadcasters is much weaker than in analogue, and the presence of vertically integrated multichannel players is much stronger: Sky's portfolio share

(including JV channels) in digital homes is 9.4%, comparable to Channel 4's portfolio position (9.6%), and much larger than Five's (5.3%).¹

Channel 4 believes that effective competition in this market, in addition to the "analogue conversion" market, should be an objective Ofcom actively pursues.

Channel 4 proposal

The continuation of the "analogue conversion" market suggests that the retention of ex ante rules governing platform neutrality remains — for the time being — a helpful intervention in the interests of facilitating full consumer information. However, we believe restricting platform neutrality to just the commercial terrestrial broadcasters would unnecessarily inhibit the operation of the "digital competition" market.

We therefore propose that platform neutrality obligations are extended to all broadcasters with significant platform interests. This would mean Sky and Flextech/Telewest — who also happen to be major beneficiaries of the switchover process — would be obliged to be platform neutral in their promotions in addition to ITV, Channel 4 and Five. We also suggest that, given the pace of change in digital television, Ofcom revisits this issue in two, not three years.

b. The definitions of "digital platform" and "digital retail television service"

It is axiomatic that the most powerful marketing communications are those that are easiest to understand. In digital television, broadcasters have so far been able to retain a level of simplicity in cross-promotions mentioning digital platforms and retail television services due to the fact that there are only three major digital broadcast platforms, with each having only one or two retail services associated with it. This has helped make messages about the digital options available much more manageable for consumers.

Recently, however, platform choice for the provision of digital video content has begun to grow beyond the three main digital broadcast platforms, and is poised to expand rapidly:

Mobile: The main network operators, plus a host of mobile virtual network operators (which lease capacity from a network operator, e.g. Virgin) are beginning to offer video — both simulcast and on-demand programmes and clips — via 3G. Mobile broadcast technologies such as DAB/DMB (which launched earlier this year) and DVB-H will further expand the offering significantly.

¹ Full year 2005 (BARB)

IPTV: A number of providers, including BT and some broadband ISPs, are likely to launch television services over broadband DSL phone lines to set-top boxes, joining existing players HomeChoice and Kingston Communications. Video-on-demand will likely form the core of their television proposition.

Broadband video for PCs: Similarly, a number of Internet and media companies are developing Internet video services that ultimately could aggregate a broad range of linear and on-demand channels.

The introduction of these platforms and competitors will lead to both an expanded number of potential “digital platforms” and a very large number of potential “digital retail television services”, each of which will offer slightly different content, functionality and geographic coverage.

In this world, Channel 4 services (linear and on-demand) may well be available in different forms, at different times, and in different parts of the country as we build up the patchwork of distribution relationships with disparate service providers.

If these platforms and service providers are designated as “digital platforms” and “digital retail television services” for the purposes of platform neutrality in cross-promotion it would present enormous issues for Channel 4’s cross-promotion strategy. It would lead to at best complex, at worst misleading cross-promotions.

References to “digital platforms”

Under Ofcom’s proposed rule 2.2b covering cross-promotional references to “digital platforms”, two problems arise. First, some of these emerging platforms do not have a generic name that is understood by consumers (e.g. IPTV, DSL). This makes it difficult to market service availability at the platform level. Second, incomplete Channel 4 service availability on these platforms will recreate (and magnify) our recent experience with FilmFour, in which our cross-promotion of that channel’s availability on satellite and cable was misleading as it was not available to Telewest customers.

References to “digital television retail services”

The alternative approach, covered in proposed rule 2.2a, covering “digital retail television services” would lead to highly complicated and cluttered messages (mentioning long lists of brand availability or directing consumer to a separate information source). This would completely undermine the central purpose of the communication, to promote a Channel 4

service, in the process bewildering analogue viewers already uncertain about what digital really means.

Channel 4 proposal

Whilst recognising the value of platform neutrality in the linear television broadcast environment, it is imperative that Channel 4 has full flexibility to devise its communications for other types of content service — such as video-on-demand — in a way that takes account of the fragmented market and low level of consumer understanding.

We therefore propose that platform neutrality rules are explicitly framed to apply only to the cross-promotion of linear broadcast television services, and that only neutrality between the three main digital broadcast platforms — satellite, cable and Freeview — and their respective retail service providers is required.

c. The generic name for the DTT platform

Ofcom notes in its consultation paper that Freeview is often used interchangeably with the DTT platform. This has become the norm across the industry, and has been essential in helping consumers better understand the platform choices available to them. Indeed, the Freeview name was originally designed as a platform name as well as a retail brand, and this has informed the marketing of the platform since launch. However, Ofcom refers to “digital terrestrial television (DTT)” as an example of a “digital platform” in its platform neutrality rules.

Channel 4 proposal

It is imperative that the use of Freeview as a platform name continues to be allowable under the revised cross-promotion rules. Channel 4 proposes that the wording in the platform neutrality rules amended to take account of this.

Question 5: Do you agree that Ofcom should withdraw the Current Rules in relation to the cross-promotion of channels and rely on the ex post enforcement of the fair and effective competition condition to address any competition issues that may arise?

Channel 4 agrees with Ofcom’s analysis that promotion activity does not adversely affect competition in the channels market, and that ex post enforcement is the most appropriate regulatory approach, particularly given the presence of significant channel portfolio competition from non-terrestrial content groups (such as Sky, Flextech or Viacom) in the multichannel environment.

Question 6: Do you agree that Ofcom should withdraw the Current Rules in relation to the cross-promotion of services in other broadcasting markets and rely on ex post enforcement of the fair and effective competition condition to address any competition issues that may arise?

Channel 4 agrees that ex post enforcement is a preferable approach to regulating the effect of cross-promotion activity on competition in other broadcasting markets.

Question 7: Do you consider that Option A3 — rely on the Broadcasting Code, i.e. no separate content rules for cross-promotion — is the most appropriate option for in-programme cross-promotions?

Channel 4 endorses Ofcom's proposal to refer to the Broadcasting Code in relation to content regulation of cross-promotion within programmes.

Question 8: Do you consider that Option B2 — no content regulation for cross-promotion — is the most appropriate option for outside programme cross-promotions?

Channel 4 supports Ofcom's conclusion that the removal of content regulation applied to cross-promotion activity outside of programmes is the best option, and that issues arising from outside programme cross-promotion are better considered in terms of its effect on competition.

Question 9: Do you agree that cross-promotions should be limited to broadcasting-related services?

Channel 4 supports Ofcom's intention that cross-promotional activity benefits and is relevant to viewers, and does not resemble advertising. However, it is critical that the definition of allowable subject matter for cross-promotions enables Channel 4 to respond to the creative and commercial challenges and opportunities of the emerging and fast-changing new media environment.

In this environment, the definition of "broadcasting" is changing, and now includes a wide range of content types and delivery channels that both supplement and substitute for the core linear broadcasting experience.

As we set out in our introduction to this consultation response (and in more detail in our responses to Ofcom's Public Service Television Broadcasting Review last year), Channel 4

believes that in order to future-proof the delivery of its public service remit we must develop a wide range of services, addressing both public service and supporting commercial goals, that take us far beyond traditional broadcasting.

The ability to use the rest of our portfolio — in particular Channel 4 itself — to promote these new activities is often a prerequisite for new service business plan approval. As such it is crucial component of Channel 4's digital public service strategy. It is therefore vital that the definition and interpretation of "broadcasting-related" is sufficiently flexible to allow the on-air promotion of the wide range of digital products and services we will need to launch in order to remain an effective and valued public service broadcaster.

Question 10: Do you agree that it is unnecessary to retain the 20 second rule in RADA?

Channel 4 endorses Ofcom's proposal to remove the 20 second rule from both cross-promotion rules and RADA.

Question 11: Do you consider that the Broadcasting Code is sufficient to regulate radio cross-promotions and therefore there is no need for additional regulation?

Channel 4 agrees that there is no need, outside of the relevant provisions in the Broadcasting Code, to develop specific cross-promotion regulation for radio.