



## **Ofcom guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services**

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### **Introduction**

Ofcom has general regulatory responsibility for broadcasting content standards in the UK. It has contracted out the regulation of most aspects of broadcast advertising to the ASA, but retains responsibility for the advertising of telecommunications-based sexual entertainment services and all other 'participation TV' (PTV) services<sup>1</sup>. These services are, in common with all other advertising-based services, subject to the provisions of the *BCAP Code: the UK Code of Broadcast Advertising* ("the BCAP Code"), but are the responsibility of Ofcom rather than the ASA.

This guidance note is intended to assist licensees who carry 'daytime chat' and/or 'adult chat' material to understand the likely interpretation of the BCAP Code that Ofcom will apply.

This guidance is issued by Ofcom under the BCAP Code. The BCAP Code is drawn up and published by the Broadcast Committee of Advertising Practice Ltd (BCAP) and is generally interpreted and enforced by the Advertising Standards Authority (Broadcast) Ltd (ASA). This arrangement whereby duties allocated by Parliament to Ofcom are carried out by BCAP and ASA has been effected through a procedure of contracting out<sup>2</sup> of Ofcom's statutory duties to regulate broadcast advertising.

However, not all aspects of advertising regulation have been contracted by Ofcom to BCAP and ASA. One of the areas Ofcom is responsible for is the regulation of long-form PTV advertising. This class of advertising includes telecommunications-based chat services – these are also known as 'adult chat' and 'daytime chat'.

In this note the terms 'adult chat' and 'daytime chat', and variations, refer to advertising transmitted before or after the 9pm 'watershed' – see below for an explanation of the permitted hours and other rules.

### **Significant BCAP Code rules<sup>3</sup>**

Below are the principal BCAP Code rules that apply to PRS adult chat and daytime chat services.

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<sup>1</sup> Participation TV is defined as long-form television advertising for direct-response, remote entertainment services that typically include the possibility of interacting with broadcast content.

<sup>2</sup> Memorandum of Understanding between Ofcom and the ASA and BCAP and Basbof can be found at: [http://stakeholders.ofcom.org.uk/binaries/consultations/reg\\_broad\\_ad/statement/mou.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/reg_broad_ad/statement/mou.pdf)

<sup>3</sup> The full BCAP code can be found at: <http://www.cap.org.uk/The-Codes/BCAP-Code.aspx>

#### BCAP Section 4: Harm and offence

Rule 4.1: *Advertisements must contain nothing that could cause physical, mental, moral or social harm to persons under the age of 18.*

Rule 4.2: *Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.*

#### BCAP Section 23: Telecommunications-based sexual entertainment services

*Telecommunications-based sexual entertainment services are voice, text, image or video services of a sexual nature that are made available to consumers via a direct-response mechanism and are delivered over electronic communication networks.*

*'Encrypted elements of adult entertainment channels' are interpreted with reference to rule 1.18 of the Ofcom Broadcasting Code.*

Rule 23.2: *Television only – Advertising for telecommunications-based sexual entertainment services is only acceptable on:*

*23.2.1 Encrypted elements of adult entertainment channels, or*

*23.2.2 Channels that are licensed for the purpose of the promotion of the services and are appropriately positioned and labelled within an "Adult" or similar section of an Electronic Programme Guide.*

Rule 23.3: *Television only – Advertising for telecommunications-based sexual entertainment services must not be broadcast before 9pm or after 5:30am. On Digital Terrestrial Television, advertising for telecommunications-based sexual entertainment services must not be broadcast before 12am or after 5:30am.*

#### BCAP Section 30: Pornography

Rule 30.3: *Television only – Advertisements for products coming within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only.*

*Rule 30.3.1: Television only – Advertisements must not feature R18-rated material or its equivalent. That does not preclude advertisements for R18-rated material or its equivalent behind mandatory restricted access on adult entertainment channels.*

*Rule 30.3.2: Television only – Advertisements permitted under rules 30.3 and 30.3.1 must not feature material that comes within the recognised character of pornography before 10.00pm or after 5.30am.*

#### BCAP Section 32: Scheduling

Rule 32.3: *Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them.*

## Existing BCAP scheduling guidance

The following is extracted from guidance issued by BCAP in respect of the scheduling of advertising (Section 32 of the BCAP code)<sup>4</sup>.

### *Principle*

*Broadcasters must take special care when scheduling advertisements that might be unsuitable for children or young persons or the audience of religious programmes or for broadcast around sensitive programming or news items.*

### *Children*

*Advertisements that might frighten or distress children or are otherwise unsuitable for them (for example because they refer explicitly to sexual matters) must be subject to restrictions on times of transmission to minimise the risk that children in the relevant age group will see or hear them. That does not preclude well-considered daytime scheduling for such material but broadcasters should take account of factors, such as school holidays, that could affect child audience levels. Material that would be incomprehensible to pre-school children and could, therefore, reasonably be broadcast when they are viewing or listening with parents, might be more problematic in relation to older children.*

*For the avoidance of doubt, any given timing, programme category or age band restriction subsumes any other less severe restriction. Thus, on television, a 9.00pm restriction subsumes both a 7.30pm restriction as well as the restriction on scheduling in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to children below the age of 16 or to programmes likely to have a significant child audience.*

*Special care needs to be exercised if a programme for, or likely to be of interest to, children is transmitted late in the evening or in the early hours of the morning, for example at Christmas. If such a programme is transmitted after 9.00pm, no advertisement carrying a timing restriction may be transmitted in or around that programme.*

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<sup>4</sup> <http://www.cap.org.uk/The-Codes/BCAP-Code/BCAP-Code-pdf-versions.aspx>

## Background

On 1 September 2010 revised editions of The Ofcom Broadcasting Code (the Broadcasting Code) and of the UK Code of Broadcast Advertising (the BCAP Code) came into force. The changes to the Broadcasting Code were limited to new rules in Section Ten (Television) that cover the use of premium rate telephone services (PRS)<sup>5</sup>.

Changes to the BCAP Code included the introduction of new rules<sup>6</sup> modifying the regime for the advertising of 'telecommunications-based sexual entertainment services' (referred to in this guidance as adult chat services). Such services – previously confined by the BCAP Code to encrypted<sup>7</sup> parts of 'adult' services – can now be offered on free-to-air channels, subject to certain conditions (see 'application of the BCAP Code' below).

**The effect of the changes to Section Ten of the Broadcasting Code and Section 23 of the BCAP Code means that PRS chat services (including adult chat and daytime chat as well as other 'participation' formats) are regulated as advertising, i.e. as teleshopping, and are no longer treated as editorial material. This means that all their output must comply with the BCAP Code.**

Ofcom retains responsibility for the regulation of long-form 'participation TV' content<sup>8</sup>. This includes adult chat and daytime chat. Ofcom will therefore enforce the BCAP Code in respect of such services<sup>9</sup>. Any regulatory action taken under the BCAP Code regarding adult chat and daytime chat services will take into account previous Ofcom decisions in this area, that were previously considered under the Broadcasting Code.

## Application of the BCAP code

Broadcasters operating in this area should be familiar with all parts of the BCAP Code, as well as Rules 23.2 (including 23.2.1 and 23.2.2) and 23.3.

Rules 23.2.1 continues the previous position under which adult chat services can be advertised on encrypted adult channels.

However, Rules 23.2.2 and 23.3 now permit adult chat to be advertised (and so broadcast) within prescribed times on free-to-air channels that are specifically licensed by Ofcom for that purpose. For cable and satellite platforms the acceptable hours are between 9pm and 5.30am. For Digital Terrestrial Television (Freeview) the permitted hours are between midnight and 5.30am.

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<sup>5</sup> On 28 February 2011, Code Section Nine (Television) on Sponsorship, and Code Section Ten (Television) on Commercial References, were replaced by a new, comprehensive Code Section Nine on all forms of commercial reference in television programming.

<sup>6</sup> Following consultation by Ofcom; <http://rhprod-webstg01:8080/consult/condocs/participationtv3/ptv3.pdf>

<sup>7</sup> 'Encrypted', 'encryption' etc should be understood as synonymous with the term 'mandatory restricted access' as used in the Broadcasting Code – see Rule 1.18 of the Code.

<sup>8</sup> Ofcom is also responsible for all long-form 'participation TV' advertising, including 'adult chat', other chat, 'psychic' services, message boards, gambling and dating.

<sup>9</sup> See paragraph 1.24 of the Participation TV statement at: <http://stakeholders.ofcom.org.uk/binaries/consultations/participationtv3/statement/statement.pdf>

On platforms that offer segmented and labelled EPGs these channels must be placed within the 'adult' or similarly identified section of the listings. On Freeview, 'bookends' mark out the 'adult' services to viewers who may be moving through channels in turn, and the Freeview EPG listings places the word ADULT before each channel's name in the list.

Notwithstanding these requirements, however, it should be noted that although Rules 23.2.1 and 23.2.2 both refer to "advertising for telecommunications-based sexual entertainment", the nature and strength of the advertising content permissible under each rule will vary considerably. Under Rule 23.2.1 such advertising can be of a strength appropriate only on a channel subject to mandatory restricted access ('encrypted') and subject to such channels' timing restrictions. But under Rule 23.2.2 material of a sexual nature must be suitable for provision free-to-air and therefore cannot approach the explicitness of material acceptable under encryption.

The conditions that attach to Rules 23.2.2 and 23.3 now enable this category of advertising to be on screen free-to-air. These conditions are not a substitute for mandatory restricted access. Therefore it must be understood through all the guidance that follows that material, whether in vision or audio, provided on a free-to-air adult chat service – i.e. governed by Rules 23.2.2 and 23.3 – must be **much** more restrained than material transmitted under the terms of Rule 23.2.1, i.e. that is provided under encryption.

Licensees in this field should also bear in mind that services subject to Rule 23.2.2 are classed as advertising. The advertising content of such services therefore enjoys very much less latitude than is typically available to editorial material in respect of context and narrative. A primary intent of advertising is to sell products and services and consideration of acceptable standards will take that context into account.

As adult chat services are required to operate on certain number prefixes (0908, 0909, 098 etc), no such prefix should ever be used outside the prescribed hours.

### **Acceptable standards for post-watershed content**

This guidance is provided to help broadcasters ensure that material broadcast on adult chat services is suitable for broadcast without mandatory restricted access.

### **Encrypted adult chat advertising**

Under Rule 23.2.1, advertising for telecommunications-based sexual entertainment refers to material that is of the strength that is only appropriate under mandatory restricted access and the other controls, including permitted hours, that exist for channels broadcasting 'adult sex material'. In those circumstances Ofcom expects that only Rule 4.2 above will be relevant and that standards for such advertising can reasonably be interpreted with reference to those standards that apply to the generality of such channels' content.

Under Rules 30.3 and 30.3.2, advertising for products that are considered to be pornography are permitted behind mandatory restricted access on adult entertainment channels only, between 10.00pm and 5.30am. However, Rule 30.3.1 is clear that advertisements, whether behind mandatory restricted access or not, must not feature (that is contain) R18-rated material or equivalent images.

### **Free-to-air adult chat advertising**

Under Rule 23.2.2, advertising for telecommunications-based sexual entertainment services, which are broadcast after the 9pm 'watershed', refers to material that is broadcast without mandatory restricted access. Therefore such content should only include images and/or

language that are appropriate for a free-to-air service. Licensees are reminded that the 'watershed' is at 9pm and adult chat advertising is acceptable between 9pm and 05.30am only.

### **The transition at 9pm and 5.30am**

After 9pm any move towards stronger – but still very restrained – material containing sexual imagery should be gradual and progressive<sup>10</sup>. There should not for example be any miming of sexual acts between 9 and 10pm.

Adult chat broadcasters should ensure that the transition **to** more adult material at 9pm and **from** adult chat to daytime chat at 5:30am, is not unduly abrupt.

Licensees should familiarise themselves with the decisions Ofcom has made in this area and published on its website (<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>). Set out below are some of the *key* points to assist licensees when broadcasting these services. **Please note that the following points are not exhaustive.**

Adult chat broadcasters should:

- not broadcast shots of bare breasts before 22:00;
- at no time broadcast invasive shots of presenters' bodies. Ofcom cautions against physically intrusive, intimate shots of any duration; and against less intrusive shots that may become unacceptable by virtue of their being prolonged;
- at no time broadcast anal, labial or genital areas or broadcast images of presenters touching their genital or anal areas either with their hand or an object;
- ensure that presenters' clothing adequately covers their anal, labial or genital areas. They should also avoid adjusting their clothing (including clutching or bunching) which results in anal, labial or genital areas being exposed;
- at no time broadcast images of any real or simulated sex acts (these include vaginal or anal intercourse, masturbation, fellatio or cunnilingus);
- at no time include shots of presenters spitting onto their or others' bodies, or include shots of presenters using other liquids, such as oil and lotions, on their genital or anal areas.
- at no time broadcast shots of presenters using liquids of a sort or in a way which suggests the liquid is ejaculate;
- at no time broadcast sexually explicit language; and
- ensure any sexual language broadcast is restrained, and avoid its use altogether before midnight.

Licensees should take particular care if two or more presenters appear together on screen. If there is any contact between the presenters of an erotic or sexual nature (for example kissing, stroking, or contact between thighs, breasts or genital areas) or any miming or

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<sup>10</sup> Please note, the 9pm threshold does not apply to Digital Terrestrial Television channels. On those channels adult chat cannot be broadcast before 12am or after 5.30am.

simulation of a sexual act performed by one presenter on another, in Ofcom's view there is a high risk of causing serious or widespread offence against generally accepted standards.

### **Website references and products that fall within the recognised character of pornography**

Under Rule 30.3, Ofcom licensed services that are broadcast without mandatory restricted access must not promote websites or products such as video content or images, that contain material within the recognised character of pornography.

Under Rule 30.3.1, advertisements for R18 and equivalent products (such as websites or video content or images that contain R18 material or its equivalent) are allowed on services with mandatory restricted access only. R18-rated material or its equivalent must not however feature in advertisements under any circumstances.

Ofcom has published findings which illustrate its interpretation of Rule 30.3 regarding products that fall within the recognised character of pornography:

<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb223/>

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb224/obb224.pdf>

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb225/obb225.pdf>

### **Misleading content**

Broadcasters should be aware that they must not materially mislead viewers. Therefore they should take note of the relevant rules in section three of the BCAP Code (Misleading advertising). For example, this section provides rules on areas such as pricing and superimposed text. Broadcasters should not suggest (implicitly or explicitly) that material is live when in fact it is pre-recorded, if it would result in the viewer being materially misled.

Broadcasters are invited to note Ofcom's audience research on a range of sexual material, including 'adult sex material', which can be found at <http://stakeholders.ofcom.org.uk/binaries/consultations/bcode09/annexes/sextv.pdf>



## Acceptable standards for pre-watershed content

This guidance is provided to help broadcasters ensure that material broadcast on daytime chat services is appropriate for broadcast pre-watershed.

Adult chat advertiser-licensees may wish to use time outside of the permitted 'adult' periods to advertise general chat, that is non-sexual chat, services. These services are often referred to as daytime chat.

The presentation of daytime chat should always be suitable for wide audiences, that is for audiences including children and young persons. Therefore the content should be suitable for children to view should they come across it unawares. Such services should not suggest that sex chat of any sort is available by using the numbers being advertised or otherwise, nor seek to suggest that the channel will be offering sexual entertainment services at a later time. **All dress and behaviour should be non-sexual in tone and apparent intent.** Presenters should not adopt poses or behave in ways that suggest sexual acts or sexual availability. Therefore, presenters should not cross the line between very restrained 'glamorous' presentation and sexual dress, speech, expression or conduct.

Set out below are some of the *key points* that licensees should apply when broadcasting these services. **Please note that the following points are not exhaustive.**

Daytime chat broadcasters should:

- ensure that presenters are wearing appropriate clothing, that adequately covers their bodies, in particular their breasts, genital areas and buttocks. Presenters should not wear revealing underwear, swimwear, gym wear or fetish clothing (this includes nurse, secretary or police officer outfits);
- not broadcast images of presenters touching or stroking their bodies in a suggestive manner, in particular avoiding breasts, thighs, crotches and buttocks;
- not broadcast images of presenters mimicking sexual intercourse by rocking and thrusting their bodies, or otherwise adopting sexual poses;
- not broadcast images of any mimed sex acts; and
- not broadcast close up and intrusive images of presenters breasts.

### Website references

Under Rule 30.3, Ofcom licensed services that are broadcast without mandatory restricted access must not promote websites that contain material within the recognised character of pornography.